

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

THE ANTIOCH COMPANY :  
LITIGATION TRUST, :  
Plaintiff, : CASE NO. 3:10-cv-00156  
vs. : (Judge Timothy S. Black)  
LEE MORGAN, et al., :  
Defendants. :  
- - -

VOLUME II

Deposition of MARK A. GREENBERG, a  
witness herein, taken as upon cross-examination by  
the Defendants pursuant to the Ohio Rules of Civil  
Procedure, before me, Kelly Green, RPR, a Notary  
Public within and for the State of Ohio, at Taft,  
Stettinius & Hollister, 425 Walnut Street, Suite  
1800, Cincinnati, Ohio, on Tuesday, August 27,  
2013, at 9:04 a.m.

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16 Lee Morgan

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1 MARK A. GREENBERG,  
2 a witness herein, having been previously duly  
3 sworn, was examined and testified as follows:

4 CROSS-EXAMINATION

5 BY MR. SHARKEY:

6 Q. Good morning, Mr. Greenberg.

7 A. Morning.

8 Q. We've met off the record. My name is  
9 Jeff Sharkey, and as you know, I represent the law  
10 firm of McDermott, Will & Emery. I'm going to ask  
11 you some questions, going to follow up on some of  
12 the questions that Mr. Scheier asked you  
13 yesterday, and we're going to look at a couple of  
14 the same documents.

15 The first document I want you to take a  
16 look at is Exhibit 799 that's been placed before  
17 you. And I believe you've previously identified  
18 that as an expert report that was authored by  
19 Barbara Wagner; is that right?

20 A. That's correct.

21 Q. And this is a document that you've read?

22 A. I did.

23 Q. Okay. And is it your understanding that  
24 Ms. Wagner sponsored certain opinions regarding

1       whether or not McDermott, Will & Emery committed  
2       malpractice and whether any alleged acts of  
3       malpractice caused injury to the company?

4           A.       That's my understanding of the document.

5           Q.       And it's true, isn't it, that you are  
6       not an attorney?

7           A.       I am not an attorney.

8           Q.       And I have read your report diligently  
9       looking for references to MWE and haven't seen  
10      any. Is it accurate that your report does not  
11      refer to or mention MWE?

12          A.       That's accurate.

13          Q.       A couple of background questions. First  
14      of all, have you ever been involved in your  
15      capacity as an investment banker in a transaction  
16      in which management was a potential buyer?

17          A.       Yes.

18          Q.       Okay. About how many times?

19          A.       Well, I'm in one right now. I've  
20      actually had two in the last -- last three  
21      months. I have a management buyout in -- one in  
22      Louisville and one in Cincinnati that we're  
23      working on. I'm trying to think of other times.  
24      Probably five or six different times, I mean,

1 where there's been management buyouts that I've  
2 been involved -- been an advisor.

3 Q. Would you agree it's not uncommon that  
4 management is a potential buyer of a business?

5 A. Not uncommon at all.

6 Q. Have you ever been involved in a  
7 transaction in which members of the board owned  
8 shares of the company that was to be sold?

9 A. I'm involved with one right now.

10 Q. Do you also agree that that's reasonably  
11 common that members of the board would own shares?

12 A. Yes.

13 Q. Ever been involved in transactions in  
14 which members of the board held debt?

15 A. I'm trying to think. Yes, actually.

16 Q. Okay. And have you ever been involved  
17 in transactions in which members of the board held  
18 options or warrants?

19 A. Yes.

20 Q. Okay. You agree it's not common that  
21 members of the board would hold either debt or  
22 options or warrants?

23 A. Do you mean uncommon? Is that what you  
24 meant?

1           Q.     Yes.  Let me rephrase.  Apparently I  
2     misstated it.  Do you agree that it's not uncommon  
3     that members of the board would hold either debt  
4     or options or warrants?

5           A.     I agree.

6           Q.     Have you ever been involved in a sales  
7     process in which you were unable to find a buyer  
8     that would offer an acceptable price?

9           A.     Yes.

10          Q.     Okay.  Do you agree that's not uncommon  
11     in the investment banking industry?

12          A.     It's not uncommon.

13          Q.     Have you ever been involved in what you  
14     would describe as complex transactions?

15          A.     Yes.

16          Q.     Have you ever been involved in any as  
17     complex as the 2007/2008 efforts to sell the  
18     Antioch Company?

19          A.     Comparatively, yes, with a client of  
20     mine for the last three years, yes.

21          Q.     Do you know what a workout specialist  
22     is?

23          A.     I do.

24          Q.     What is it?



1           A.       Typically, a workout specialist would be  
2       somebody -- might assume a chief restructuring  
3       role -- who comes in to assist the company,  
4       usually at the behest of the senior lenders, to  
5       come in and get a better handle on where the  
6       company really is financially and to assist the  
7       company in any manner of trying to improve its --  
8       its operating performance and its earnings and so  
9       forth.

10                I've actually -- by disclosure, I  
11       actually came to Cincinnati originally as a  
12       workout specialist for Fifth Third Bank as a  
13       consultant, so...

14           Q.       Okay. Is a workout specialist typically  
15       engaged in a company that's experiencing some  
16       level of financial distress at the request of the  
17       banks?

18           A.       Very often, yes.

19           Q.       So it's not unusual that a workout  
20       specialist would be engaged?

21           A.       It's not unusual.

22           Q.       Okay. And you understand that CRG  
23       served that role here?

24           A.       I do.

1           Q.     Are you aware of any facts that suggest  
2     that CRG billed for work that it didn't perform?

3           A.     I have no reason to believe that.

4           Q.     Okay. Had you heard of CRG before this  
5     case?

6           A.     I've not heard of CRG before this case.

7           Q.     Okay. Did you review the -- any  
8     materials relating to CRG or Michael Epstein's  
9     qualifications?

10          A.     I'm trying to think what was in there.  
11     I recall when he was -- when they were hired and  
12     then -- and what the recommendations were, but I  
13     don't recall looking at his specific  
14     qualifications.

15          Q.     Any reason to doubt that Mr. Epstein was  
16     qualified to perform the services he was --

17          A.     No reason to doubt.

18          Q.     Have you ever served on the board of  
19     directors of a company?

20          A.     Yes.

21          Q.     How many times?

22          A.     One, two, three, four, five.

23          Q.     Okay. What businesses were those?

24          A.     I was chairman of the board of an

1 industrial distribution and an engineering  
2 company.

3 Q. What was the name?

4 A. It was the Jay Industrial Technologies  
5 Group. I was the chairman of the board of a  
6 venture-backed company called -- it's -- it's  
7 called Atomic Dog, unusual name. It was funded by  
8 River Cities Capital Fund and Blue Chip Venture  
9 Company.

10 Q. Okay.

11 A. I was also the outside director  
12 initially. I was on the board of a couple  
13 start-up companies over the years, but those are  
14 the ones that immediately (inaudible)...

15 THE REPORTER: Immediately what?

16 A. Come to mind. Yeah, I mean, I --  
17 there's some small start-ups that I've...

18 Q. Do you recall the names of those  
19 start-ups?

20 A. There was one -- I think it was called  
21 Summit Tech. It's long gone, and -- and I'm  
22 trying to think of the other one. There's another  
23 one. It'll come to me. It's been a while.

24 Q. Have you ever served on a Special

1 Transactions Committee?

2 A. I haven't.

3 Q. Have you ever been involved in a sale  
4 process in which a Special Transactions Committee  
5 was in place?

6 A. Yes.

7 Q. About how many times?

8 A. Well, I've been in one -- involved with  
9 one in the last three years essentially for a  
10 company called BridgeStreet Worldwide.

11 Q. Okay. Is it common in your experience  
12 that Special Transactions Committees are formed?

13 A. Yes.

14 Q. Let me ask you some questions generally  
15 about the sales process, and I want to hand you a  
16 document that was -- that will be marked as  
17 Deposition Exhibit 803.

18 (Deposition Exhibit 803 was marked.)

19 Exhibit 803 appears to be an email from  
20 you to Tom Rogers and Lee Morgan dated June 18,  
21 2007. First of all, do you recall having seen  
22 this document before?

23 A. I recall writing it. I don't recall  
24 sending it to him, but I do -- certainly looks

1       like my -- my work.

2           Q.       There appears to be two documents that  
3       are attached to this email; is that correct?

4           A.       Looks like it, yeah, negotiating --  
5       something on negotiating and then -- then the  
6       first document, yes.

7           Q.       The cover email says "I wrote these a  
8       while back. Thought you might find a useful  
9       kernel or two in these." Is it accurate that you  
10      did write both of these?

11          A.       Yes.

12          Q.       Okay. And the first one is an article  
13      titled "Selling Your Company: A Few Important  
14      Lessons in Deal-Making"?

15          A.       Mm-hmm.

16          Q.       And then the second one that you  
17      authored was -- that was a yes?

18          A.       That was a yes. Sorry. I will work on  
19      that.

20          Q.       Then the second one is an article  
21      written by you titled "A few critical ideas for  
22      negotiating M&A transactions," correct?

23          A.       Yes.

24          Q.       I would like to take a look at page

1 246137.

2 A. Okay.

3 Q. Towards the bottom of the page, there's  
4 a paragraph that begins "The deal is not over  
5 until all the money is in the bank." Do you see  
6 that?

7 A. I do.

8 Q. The focus of my current couple of  
9 questions is the next sentence that says "An M&A  
10 transaction can take several months and even as  
11 long as an entire year." Did I read that  
12 accurately?

13 A. You have.

14 Q. Okay. First of all, is that an accurate  
15 statement?

16 A. Oh, yes.

17 Q. Okay. And when you refer to the time  
18 period several months and even as long as an  
19 entire year, I'm assuming the closing point is  
20 when the money's in the bank?

21 A. That's usually -- that's what I mean,  
22 yes.

23 Q. Okay. What's the beginning point that  
24 you're referring to there?

1           A.       Well, an M&A transaction has a --  
2       there's a lot of process involved. And from the  
3       -- from what I do for a living's point of view, we  
4       go from everything from initial discovery through  
5       developing all the financial profiles pro forma.

6                   We do initial evaluations. We draft  
7       information memoranda, pitch decs, blind  
8       investment summaries. We set up the initial deal  
9       rooms in the initial part of it. And that's  
10      usually what -- what happens first.

11                  You're -- you're becoming deeply  
12      acquainted with the company so that you're able to  
13      speak to the potential interjectories of the  
14      business and -- and a handle on the company itself  
15      and also to have a sense how you could -- how you  
16      might calibrate reasonable valuations for the  
17      company, what would be a reasonable offer. That's  
18      how you go about doing it.

19           Q.       So from the time an investment banker is  
20      engaged to a time a deal is closed, it can be  
21      several months to an entire year?

22           A.       Very often.

23           Q.       Have you been involved in transactions  
24      that took longer than a year?

1           A.       Yeah. I closed one -- I sold a company  
2 to Waste Management last year that took us almost  
3 a year and a half.

4           Q.       Let me ask you some questions generally  
5 about the sales process.

6           A.       Mm-hmm.

7           Q.       Is it common that an investment banker  
8 would send something called a teaser --

9           A.       Yes.

10          Q.       -- to prospective buyers?

11          A.       Yes.

12          Q.       What's a teaser?

13          A.       It's a -- I call it -- it's a blind  
14 investment summary. It's a prospectus of the  
15 company without necessarily indicating the  
16 identity of the company. You're looking to send  
17 out -- to describe characteristics of the company  
18 at very high level financial terms, what kind of  
19 business they're in.

20                 And you do that prior to -- and in the  
21 process of trying to effect -- to get a  
22 non-disclosure agreement so you can move to the  
23 next level. So that's what it is.

24          Q.       So is a teaser generally sent to a



1 substantial number of potential buyers?

2 A. Well, I'm not sure what you mean by  
3 substantial. It depends on the opportunity and  
4 how you -- what you might think the potential  
5 buyers are. But it can be, certainly.

6 Q. Typically, I assume, that not everybody  
7 to whom the teaser was sent would respond?

8 A. True.

9 Q. And those who do respond indicating they  
10 have some level of interest, would they be  
11 expected to sign some type of confidentiality  
12 agreements?

13 A. Yeah, absolutely.

14 Q. And then what type of information would  
15 be provided to them after they signed the  
16 confidentiality agreements?

17 A. The initial information is the  
18 confidential information memorandum, the offering  
19 memorandum, and there might be additional deal  
20 room -- early stage process deal room information  
21 that is additional -- additional -- could be --  
22 could be financials -- you know, financial models,  
23 a variety of different things that might be in  
24 there. There might be abstracts of leases or

1 actual leases. But the initial discovery stuff  
2 that somebody would want in preliminary due  
3 diligence.

4 Q. Just so I understand clearly, in the  
5 teaser process, it's sort of high level  
6 information that would hold the name of the  
7 potential target, and it's just sort of high level  
8 data about that?

9 A. Correct.

10 Q. And then after somebody has signed a  
11 confidentiality agreement, they will be provided  
12 additional information that you, as the investment  
13 banker, have decided is something that's important  
14 for prospective buyers to see and should be  
15 interested in seeing?

16 A. Yes, with the only proviso that also --  
17 with -- that the company also -- the client also  
18 agrees that this is reasonable information.

19 Q. After that round of confidential  
20 information has been reviewed, is it frequent that  
21 more prospective buyers will fall out indicating  
22 they're not interested in the opportunity?

23 A. Oh, yes.

24 Q. If some remain, what's the next step?

1           A.       The next step is -- typically in the  
2 process is there's usually additional discovery --  
3 diligence type of discovery that goes on, and you  
4 -- you're fielding questions. There might be  
5 management meetings. There might be site visits,  
6 although we tend to -- in my group, we tend to  
7 push those way out.

8           And -- and that leads to the point where  
9 you'll start putting out -- seeing who's  
10 interested. You might put out -- you might do it  
11 in a way where you put out bid instructions to get  
12 initial indications of interest or a letter of  
13 intent. And you try in the process to move  
14 everybody along about the same time so that -- so  
15 that people have reasonably equal access and time  
16 with the information.

17          Q.       Okay. And you mentioned a letter of  
18 intent. What is that?

19          A.       A letter of intent is the -- really the  
20 indication of the level of interest. Typically  
21 what we would be looking for is how much they're  
22 willing to pay for the company, so the valuation  
23 that they're going in with.

24                 We look for the conditions and terms,

1     you know, what kind of structure that might be.  
2     Is it all cash? Are there notes? Earnouts, if  
3     that's possible. We look to see what the  
4     structure of the deal would be. Is this going to  
5     be an asset purchase, or is it going to be a stock  
6     purchase?

7             In our -- in our firm, we look for  
8     substantial amounts of details in the letter of  
9     intent such that when we finally have the finished  
10    negotiated letter of intent, that when we go in to  
11    do diligence, we have at least reasonable moral  
12    suasion as to what the terms are of the deal  
13    before you get into diligence. Diligence can be  
14    tricky if you're not careful going up front.

15            It will have all that. They're  
16    typically non-binding except for the exclusivity  
17    provision if you go forward and all the  
18    confidentiality and non-solicitation provisions  
19    that are also attended to the agreement.

20            Q.     You mentioned that a letter of intent is  
21    non-binding. Can you describe why it is the  
22    letter of intent is non-binding?

23            A.     Because it's subject to additional due  
24    diligence. And usually that -- that will be some

1 phrase of that sort, that this is our offer  
2 subject to initial and final due diligence.

3 Q. And then due diligence is even a more  
4 in-depth analysis done by the potential acquirer  
5 of the target company?

6 A. Yes.

7 Q. Still within Exhibit 803, I'd like to  
8 turn to page 246137.

9 A. I don't seem to have 137. Sorry. Maybe  
10 I do.

11 Q. It's the same --

12 MS. ANDREW: What page were we on?

13 Q. -- the same page we were on before.

14 A. Oh, I just flipped it. My fault.

15 MS. ANDREW: Turn to the page you're on.

16 A. I'll get with it. It's early yet.

17 Q. It's really in the same paragraph. A  
18 few sentences later, there's a sentence that  
19 begins with the words "More value." Do you see  
20 that?

21 A. More value is lost between the time --  
22 yes.

23 Q. It says "More value is lost between the  
24 time there is a signed letter of intent and a

1 closing than anyone ever cares to admit." Did I  
2 read that accurately?

3 A. You have.

4 Q. Is it true?

5 A. It's often true.

6 Q. And why is that?

7 A. Because -- it depends. I mean, if --  
8 the due diligence process is an opportunity for  
9 many -- particularly for private equity investors,  
10 but potentially also strategic investors, to find  
11 ways of basically reducing their level of  
12 commitment in terms of share price or stock price  
13 or total valuation.

14 And that could be any number of things.  
15 It could be a revaluation of assets. It could be  
16 revaluation -- not untypically in distribution  
17 companies, you end up seeing revaluations of  
18 inventories, things that if weren't properly  
19 disclosed up front and not already subject to some  
20 of the LOI discounting up front, may become a  
21 claim that some portion of the assets are impaired  
22 or that some relationship with a customer is not  
23 what they said it was.

24 It's an opportunity to -- to nick the

1 seller. And if it's not -- if you're not managing  
2 the distrib- -- the process well, then and that  
3 can happen and does happen. It's happened to me.

4 Q. Is it common that a prospective  
5 purchaser will insist on some type of price  
6 concession between the time that a letter of  
7 intent is signed and the final agreement is  
8 signed?

9 A. It's not uncommon.

10 Q. It's also true, isn't it, that during  
11 this final due diligence process, it's not  
12 uncommon that a prospective acquirer will decide  
13 that they are not interested in the opportunity?

14 A. It's true.

15 Q. Assuming somebody -- a prospective  
16 acquirer makes it through all the steps we've  
17 discussed, there would be some type of final  
18 binding agreement signed?

19 A. Yes.

20 Q. Okay. If it's to be an asset sale,  
21 there'd be an asset purchase agreement?

22 A. That's correct.

23 Q. Now, you've reviewed in this case the  
24 process that Houlihan Lokey engaged in, correct?

1           A.     I have.

2           Q.     And you're familiar with the steps that  
3 they took to contact potential buyers?

4           A.     Yes, very familiar.

5           Q.     Does it appear to you that the process  
6 engaged by Houlihan Lokey was generally consistent  
7 with this process that we've just discussed?

8           A.     Yes, it was.

9           Q.     Let me ask you some questions about the  
10 role of an investment banker.

11          A.     Mm-hmm.

12          Q.     Is it generally true that clients who  
13 want to sell their businesses frequently hire  
14 investment bankers?

15          A.     Yes.

16          Q.     Why?

17          A.     For a bunch -- for a number of reasons.  
18 One, is it is a -- a process that is, (A),  
19 enormously time consuming and would require  
20 certain levels of expertise and experience to do.

21                 Another reason would be access to a  
22 buyer's market. Another one would be expertise in  
23 negotiating deals and what kinds of things are  
24 available to negotiate in a deal. And -- and



1       those are primarily it.

2           Q.       Is it fair to say that the job of the  
3       investment banker is to advise the client on the  
4       best way to get a deal to fruition?

5           A.       Yes.

6           Q.       And would you describe the advice an  
7       investment banker provides as business advice?

8           A.       Yes.

9           Q.       Let me ask you about some specific  
10       things regarding investment banker's advice. Is  
11       it usually the investment banker's job to advise  
12       the client who to send a teaser to?

13          A.       Yes.

14          Q.       What was the term you used instead of  
15       teaser?

16          A.       We call it an investment summary -- a  
17       blind investment summary, same thing. We also  
18       call them teasers. Same thing.

19          Q.       And would it be the role of the  
20       investment banker to advise the client on who the  
21       teaser should be sent to?

22          A.       Yes, typically.

23          Q.       Okay.

24          A.       Depending on the sensitivity. I mean,

1 if there's strategic buyers involved, there may be  
2 a desire on the part of the client not to send it  
3 to certain -- certain -- certain potential buyers.  
4 But yeah, we -- our process is that we have -- we  
5 get approval on who we're going to send it out to.

6 Q. And I've been asking my questions using  
7 the phrase advise. Let me just clarify. Is it  
8 true that investment bankers provide advice, but  
9 it's ultimately the client who makes the  
10 decisions?

11 A. Yes.

12 Q. So you may advise that the teaser should  
13 be sent to these 25 people; but without the  
14 client's decision, you won't do that?

15 A. That's correct.

16 Q. Is it typically the role of the  
17 investment banker to advise regarding whether  
18 particular offers are fair?

19 A. Yes.

20 Q. Is it the role of the investment banker  
21 to advise the client regarding whether to counter  
22 to particular offers?

23 A. Yes.

24 Q. Is it the role of the investment banker

1 to advise clients regarding when they should  
2 counter?

3 A. I would think so, sure.

4 Q. Is it the role of the investment banker  
5 to advise the client regarding who they should  
6 have negotiations with?

7 A. Yes.

8 Q. And how to handle those negotiations is  
9 also something an investment banker would do?

10 A. Yes.

11 Q. Okay. In the piece you have in front of  
12 you, I can point you to a page, but -- maybe I  
13 will. It's 246136, so one page earlier.

14 A. Okay.

15 Q. Towards the bottom of the page, there's  
16 a paragraph that begins in bold. It says "Slow  
17 everything down and be patient." Do you see that?

18 A. I do.

19 Q. Do you agree that it's the  
20 responsibility of the investment banker to advise  
21 the client regarding how quickly they should act  
22 in response to indications of interest in the  
23 market?

24 A. Yes.

1           Q.     And why -- well, first of all, you  
2     provided the advice in this piece that says "Slow  
3     everything down and be patient." Can you describe  
4     why you provided that advice?

5           A.     Mostly because it's really about --  
6     about not -- taking your time to make the decision  
7     in responding, taking the time to make a decision  
8     -- taking your time on what you're going to  
9     negotiate.

10                  People can get pretty anxious in these  
11     things and react quickly without really having  
12     full context. And our process -- my process has  
13     always been to -- is to slow it down. Nobody's  
14     going to run away if we don't get back to them  
15     immediately. Let's think through how we want to  
16     respond.

17                  So it's -- it's really an advice to a  
18     seller and usually to someone who is really -- you  
19     know, thinks that they need to be kind of --  
20     negotiating is somehow a -- a head-on process,  
21     which I don't think it really is.

22           Q.     Have you ever worked on transactions in  
23     which the seller had legal counsel involved?

24           A.     Oh, yes, almost always.

1 Q. You said almost always?

2 A. Yes.

3 Q. Is it fair to say that in your  
4 experience, it's the role of the investment banker  
5 to provide advice on the sales process and the  
6 role of the lawyer to provide legal advice?

7 A. Yes.

8 Q. Is it generally true in a sales process  
9 that having more prospective buyers is better than  
10 having few prospective buyers?

11 A. I would say almost always.

12 Q. Turn, if you would, to your expert  
13 report. Do you still have that handy?

14 A. I do.

15 Q. What I'd like you to do is turn to the  
16 back of page 24.

17 A. Mm-hmm.

18 Q. I want to ask you about the 2007/2008  
19 sales process. And it appears to me that you  
20 identify three specific items of injury that were  
21 suffered by The Antioch Company in this piece, and  
22 I want to see if my reading is consistent with  
23 yours.

24 First of all, you identify in your

1 report as an item of injury the failure to close  
2 on the Sun deal, correct?

3 A. No, that's not correct. I don't say  
4 it's a failure to close. I said it was a verbal  
5 offer, and it wasn't -- you know, and not followed  
6 through from what I can see. But that's -- but  
7 I'm not saying that was specifically the case.

8 Q. And you discussed that, the Sun deal,  
9 yesterday with Mr. Scheier, right?

10 A. We did. I mean, we -- there was an  
11 offer in '07, I guess, and -- and I think it was  
12 63 million, and it didn't seem to proceed beyond  
13 that, but it was pretty unspecified what that  
14 offer would look like.

15 Q. The next item of injury that appears is  
16 the failure to pursue and close on the  
17 J.H. Whitney deal. Is that an item of injury that  
18 you identify in your report?

19 A. Yes, I have.

20 Q. And then another item of injury that I  
21 see in your report is a reference to waste;  
22 namely, fees paid to advisors. Is that an item of  
23 injury as identified in your report?

24 A. It - yeah. It's incremental, but, yes,

1 it's in there.

2 Q. Okay. And is there any other specific  
3 item of injury that Antioch suffered during the  
4 sales process that you identify in your report?

5 A. Define -- can we go back to -- define  
6 injury for me. What do you specifically mean when  
7 you say...

8 Q. Well, we've discussed a couple of  
9 examples, one being the failure to close on the  
10 J.H. Whitney deal, and the other being the  
11 corporate waste. And what I'm trying to determine  
12 is if there's anything else that you identify in  
13 your report that you can say, Here is a specific  
14 item of injury suffered by The Antioch Company?

15 A. Those are the items that would be  
16 reasonably quantifiable in terms of what happened.  
17 So that's -- if that's the answer you're looking  
18 for, that's what I would say. Those were the  
19 reasonably quantifiable outcomes.

20 Q. And those are the only ones that you've  
21 identified in your report that you can think of?

22 A. There were a lot of other things in  
23 terms of process and different things that  
24 happened, but in terms of anything quantifiable,

1       that's the only thing that I -- I do refer to.

2           Q.       Let me ask you about Houlihan Lokey. Do  
3       you agree that Houlihan Lokey is a well respected  
4       investment banker?

5           A.       I do.

6           Q.       And they were well qualified for this  
7       job?

8           A.       Absolutely.

9           Q.       On page 25 of your report, if you look  
10      at the far left-hand column about ten lines down,  
11      it begins with the phrase "Reasonably competitive  
12      process by Houlihan"?

13          A.       Mm-hmm.

14          Q.       Do you see that phrase?

15          A.       Yeah, I do.

16          Q.       Do you believe that Houlihan ran a  
17      reasonably competitive process?

18          A.       I do.

19          Q.       And why do you say that?

20          A.       Well, they went out to -- in two -- in  
21      two phases, they went out to 170-plus potential  
22      buyers. They had -- some were able to get it  
23      somewhere in the neighborhood of 70 NDAs, so that  
24      meant at least roughly, I think, high 60s or



1 70s -- NDAs that were -- which meant that people  
2 were looking at the offering memoranda and getting  
3 deeper into what the opportunity was.

4 And then it obviously narrowed down to a  
5 very small number thereafter, but by any -- any  
6 count that I would say, I would think that's a  
7 reasonably competitive process given the scope  
8 that they were able to reach and the fact that --  
9 I'd add -- additional thought to that is when  
10 Houlihan, being who they are, sends you a teaser  
11 and you're an investment -- you're a private  
12 equity fund, you're going to pay attention because  
13 they're a very important force in this business,  
14 so -- so I do think it was, yes.

15 Q. Turn if you would, then, to page 18 of  
16 your report.

17 A. Okay.

18 Q. Page 18 of your report towards the top,  
19 the first full paragraph, says (as read)  
20 Meanwhile, with Houlihan effort -- with Houlihan  
21 -- with initial Houlihan efforts failing to bring  
22 in a viable offer.

23 Despite having stuttered over that a  
24 couple times, did I then read it correctly?

1           A.     Yes, you have.

2           Q.     When you're referring to the initial  
3     Houlihan efforts, you're referring to the first  
4     round --

5           A.     Yes.

6           Q.     -- where you're contacting strategic and  
7     financial buyers?

8           A.     Yes, I am.

9           Q.     And then if you would turn to the  
10    preceding page, you -- on page 17 under the  
11    heading "Early Market Indications," the second  
12    paragraph, you describe some items that describe  
13    why the initial process was unable to identify any  
14    viable offers; is that accurate?

15          A.     Yes.  It's a summary of statements made  
16    by Houlihan in their -- some of their summarized  
17    reports.  It's a paraphrasing of that.

18          Q.     And you say specifically that the  
19    consensus of the strategic acquirers was that the  
20    company's financial condition was still in  
21    freefall, had not bottomed out.  The company  
22    lacked a viable actionable strategy, that  
23    management was not up to the task of running the  
24    business and was incapable of effectively

1 addressing the decline. Is that accurate?

2 A. Yes.

3 Q. And first of all, is that an accurate  
4 summary of your beliefs as to why it failed -- the  
5 initial process failed to identify any --

6 A. Yes, it is.

7 Q. Okay. Then towards the bottom of the  
8 page, the last paragraph that runs onto the  
9 following page begins with the phrase (as read)  
10 With the company's financial condition and  
11 business model providing an insuperable barrier to  
12 generating sustained interest among strategic  
13 acquirers and private equity funds. First of all,  
14 did I read that accurately?

15 A. Not quite, but I liked yours better than  
16 mine. I said generating sustainable interest, but  
17 sustained interest is probably a better use of...  
18 But, yes. Yes, you (inaudible)...

19 THE REPORTER: You what?

20 A. I used the word "sustainable," you read  
21 "sustained," and that's the only difference. It's  
22 the same meaning.

23 Q. Now, those items that you identify,  
24 you'd agree with me, would have nothing to do with

1 the nature of how Houlihan ran its initial  
2 process; is that correct?

3 A. Yes, I agree with that.

4 Q. You understand, then, that Houlihan then  
5 contacted a distressed buyer market; is that  
6 accurate?

7 A. Phase two was the distressed buyer  
8 market. It moved over to Steven Spencer's group,  
9 or at least the group that he's in.

10 Q. Do you recall when Houlihan Lokey sent  
11 out -- let me step back. What is a distressed  
12 buyer market?

13 A. It's typically hedge funds and private  
14 equity funds that specialize in buying distressed  
15 assets, distressed companies. They usually are  
16 very practiced in dealing through bankruptcy,  
17 Article 9 sales. And there's a market of them.  
18 There are -- there are several that they contacted  
19 that show up here, but there's -- there are many  
20 others too, so...

21 Q. I think you said earlier they contacted  
22 roughly 70 prospective --

23 A. Yeah, that's --

24 Q. -- buyers in the distressed buyer

1 market?

2 A. That's approximately what they  
3 contacted, yes.

4 Q. Do you recall when Houlihan made its  
5 initial contacts into the strategic and financial  
6 markets?

7 A. They -- well, they were hired in March  
8 '07, so I'm assuming that some period  
9 thereafter -- through that period of '07 after --  
10 after March, so...

11 Q. And the contacts to the distressed buyer  
12 market was effectively a start-over with a new  
13 group of prospective buyers?

14 A. Yes.

15 Q. So you would expect that process to take  
16 a substantial amount of time to walk through the  
17 various steps that we've discussed previously?

18 A. Yes. Yeah, I do.

19 Q. Let me show you a document that has been  
20 marked as Exhibit 388 in a prior deposition.  
21 Exhibit 388 is a February 29th, 2008, letter from  
22 Marlin Equity. Have you seen this document  
23 before?

24 A. I believe I have.

1 Q. Would you describe this document as a  
2 letter of intent?

3 A. Yes.

4 Q. And you understand that this is a  
5 non-binding proposal on behalf of Marlin Equity?

6 A. I do.

7 Q. And --

8 A. Generally non-binding. There are  
9 certain aspects of it that wouldn't be, but --  
10 well, actually, they didn't -- they were not  
11 concerned about the exclusivity. So yeah, it's  
12 non-binding.

13 Q. Okay. And do you know whether The  
14 Antioch Company ever signed this letter?

15 A. I don't believe they did.

16 Q. I believe you're correct. If you would,  
17 turn to the page HL31605.

18 A. Okay.

19 Q. Do you see there's a proposed purchase  
20 price of \$40 million?

21 A. Yes.

22 Q. Okay. Make a note of that or remember  
23 it because we're going to come back to that. I  
24 just wanted to walk you through a little bit of

1 the process.

2 Then I want to show you a document that  
3 I believe you discussed with Mr. Scheier that was  
4 previously marked as Exhibit No 629.

5 A. Mm-hmm.

6 Q. That is a letter of intent from  
7 J.H. Whitney --

8 A. Yes.

9 Q. -- correct?

10 A. Yes.

11 Q. And do you see on page 1 the proposed  
12 purchase price of \$44 million? It's under  
13 "Purchase Price" towards the bottom.

14 A. Oh, I'm sorry. Yes, I do.

15 Q. Do you know whether the company ever  
16 accepted this letter of intent?

17 A. It did not.

18 Q. Let me step back. I will hand you a  
19 document that's been previously marked as Exhibit  
20 240. Exhibit 240 purports to be an executed GSC  
21 term sheet. Is this a document you've seen  
22 before?

23 A. I have.

24 Q. And do you understand that in this

1 document, The Antioch Company gave GSC a 30-day  
2 exclusive?

3 A. Yes. Page 4.

4 Q. That's on page 4?

5 A. Mm-hmm, yes.

6 Q. Is it common in investment banking  
7 transactions that a prospective buyer will ask for  
8 some type of exclusivity?

9 A. It's to be expected.

10 Q. And why do they do that?

11 A. Because they don't want to devote all  
12 the resources to doing the deal that's required  
13 even if they're being reimbursed for some of those  
14 -- to move forward.

15 There's a lot of things to look at.  
16 They look at a lot of different deals. And if  
17 they're going to get committed, they don't -- they  
18 don't want to be in a position where others are  
19 also acting at that point, so they -- they're  
20 looking for a commitment to a -- and that's what  
21 the exclusivity is for.

22 Q. As a prospective seller as a practical  
23 matter to get a deal done, do you frequently have  
24 to grant exclusivity to prospective buyers?



1           A.     Not always, but mostly, yes.

2           Q.     Did you understand GSC to be a  
3     third-party investor who wasn't affiliated with  
4     any of the owners or directors of The Antioch  
5     Company?

6           A.     Yes, I do.

7           Q.     Any reason to doubt that GSC had the  
8     financial ability to execute on this deal if it  
9     were decided to go forward?

10          A.     I had no reason to doubt.

11          Q.     And you understand GSC decided to not  
12     close on that transaction?

13          A.     I do.

14          Q.     And you don't fault anybody for the  
15     failure of that transaction to close?

16          A.     There were many reasons why it didn't  
17     close; and ultimately, the reason was GSC backing  
18     out. I think the notification was in April,  
19     but... Was any of the parties from the company  
20     and the investment banking groups -- were they at  
21     fault? No, I don't -- I don't see anybody...

22          Q.     You don't blame the process that was put  
23     in place at all for the failure of GSC to close?

24          A.     No, I don't blame the process, but I do

1 think that the deal was pretty shaky, as did -- as  
2 did others going through this, not only because of  
3 who GSC was but also because of the cost of the  
4 capital structure and whether or not the company  
5 could afford to pay the debt service on it and  
6 also in -- whether or not GSC was going to sit in  
7 their position without crowding out the balance of  
8 the equity and other -- other constituencies on  
9 the balance sheet.

10 Q. You thought it was, upon your review,  
11 unlikely that the GSC deal would close; but at the  
12 time, nobody knew for sure whether it would close  
13 or not; is that fair?

14 A. That's fair.

15 Q. Let me then show you a document that was  
16 marked in a prior deposition as Exhibit 470.

17 A. Mm-hmm.

18 Q. It's another letter of intent from  
19 Marlin Equity; is that true?

20 A. Yes.

21 Q. And you recall that the prior Marlin  
22 Equity letter of intent that we saw was dated  
23 February 29th, 2008?

24 A. I did.

1 Q. So this one's roughly two months later?

2 A. Yes.

3 Q. And if you would turn to page 6724, you  
4 will see that the purchase price is now \$45  
5 million?

6 A. I do.

7 Q. \$5 million higher than the purchase  
8 price that Marlin Equity had proposed in its  
9 letter of intent two months earlier?

10 A. Correct.

11 Q. Okay. And then I'm going to hand you  
12 Exhibit No. 188, which is a May 8 letter of intent  
13 from J.H. Whitney. Is this a document you've seen  
14 before?

15 A. Yes.

16 Q. And if you'd turn to the second page,  
17 you'll see that the offer is now, in this letter  
18 of intent, \$54 million; is that correct?

19 A. Yes.

20 Q. So that has increased approximately \$9  
21 million?

22 A. Yes.

23 Q. And the prior offer was approximately  
24 two months earlier -- the prior letter of intent,

1       rather?

2           A.       Yes.

3           Q.       Did you read the deposition of Steve  
4       Spencer?

5           A.       I did.

6           Q.       Do you recall that Mr. Spencer testified  
7       that he was able to use the fact that Mr. Morgan  
8       and Candlewood Partners were potential acquirers  
9       in negotiations to attempt and to, in fact,  
10       negotiate higher prices from J.H. Whitney and  
11       Marlin Equity?

12          A.       I don't recall that specifically.

13          Q.       Is it common in the investment banking  
14       industry that as an investment banker, you can use  
15       the fact that multiple parties are interested to  
16       attempt to negotiate higher prices?

17          A.       Yes.

18          Q.       If Mr. Spencer testified as I've just  
19       described, are you aware of any facts in the  
20       record that would suggest that he's incorrect?

21          A.       There's no facts in the record that I...  
22       I agree. There are... Do want to rephrase the  
23       question so I can answer it in some way that works  
24       for her? (Indicating reporter.)

1           Q.     Sure.  Assuming that Mr. Spencer  
2 testified as I've just described, the question  
3 then is, are you aware of any facts in the record  
4 that would suggest that his testimony was  
5 incorrect?

6           A.     No.

7           Q.     Are you aware of any facts in the record  
8 that explain why J.H. Whitney and Marlin's  
9 proposals in their letters of intent increased  
10 during that two-month span?

11          A.     I have my assumptions, but I -- I don't  
12 have facts in the record that I -- that I can  
13 cite.

14          Q.     If you would turn to page 23 of your  
15 report, there's a paragraph in the middle that  
16 begins with the phrase "With the Special  
17 Committee."  Do you see that?

18          A.     Yes, I do.

19          Q.     And then the second-to-last sentence in  
20 that paragraph says "The reason" -- actually, let  
21 me step back.  This paragraph relates to the  
22 decision of the ESOP trustee, Kenny Lenoir, to  
23 fire the board and kill the J.H. Whitney  
24 transaction?

1           A.       That's correct.

2           Q.       And there's a sentence there, the  
3 second-to-last sentence, that says "The reason for  
4 this action was that there was nothing in the deal  
5 for the ESOP and nothing in it for Lee Morgan."  
6 Did I read that accurately?

7           A.       You have.

8           Q.       Let me ask you about that. You  
9 understood that the J.H. Whitney proposal at the  
10 time was \$54 million?

11          A.       Yes.

12          Q.       And that offer was a letter of intent  
13 that was non-binding, correct?

14          A.       I do.

15          Q.       And so it was still possible that the  
16 offer would be negotiated to a lower number during  
17 an ongoing due diligence process?

18          A.       That could happen, yes.

19          Q.       And you understood -- let me step back.  
20 Do you know how much the banks were owed?

21          A.       At that point, I think around 50  
22 million, 51 million, something like this.

23          Q.       My understanding is that general range  
24 as well. And this was to be a bankruptcy

1 proceeding through chapter -- Section 363, rather?

2 A. Yes.

3 Q. In that bankruptcy proceeding, is it  
4 accurate that the banks would have the right to be  
5 paid first and completely before any other party  
6 received any money?

7 A. Yeah. If there was DIP on top of it,  
8 there would be super senior, and then the senior  
9 would be allocated after that, but yes. Generally  
10 speaking, yes.

11 Q. So there are some parties who might have  
12 a right to be paid in advance of that 50 or 51  
13 million dollars?

14 A. The debtor-in-possession financing would  
15 have seniority typically, and then you have senior  
16 debt. But generally, you know, often in these  
17 cases, the banks would also provide the DIP so  
18 that they're not -- they're not being -- they're  
19 not being haircut.

20 Q. What about Houlihan's fees; where would  
21 they have been in the process if the J.H. Whitney  
22 deal had closed?

23 A. My reading of the documents is that  
24 Houlihan negotiated some type of carve-out with

1 LaSalle and -- and they also in their agreement --  
2 that they would be -- they'd be guaranteed  
3 their -- their -- their fees through the process.

4 Q. So that would be on top of and in  
5 addition to the 51 or whatever it is that the  
6 banks are owed?

7 A. I don't know if it would have been in  
8 addition to. It might have been a carve-out of  
9 what they were owed. I'm just not exactly sure  
10 how -- what the transaction would have been.

11 Q. In any event, in addition to the bank  
12 debt, do you know if The Antioch Company had any  
13 subordinated debt?

14 A. It did.

15 Q. What subordinated debt did it have?

16 A. It had the ESOP notes, and it had the --  
17 the -- the notes -- the subordinated notes from  
18 the -- from the tender offer transaction.

19 Q. Do you know if it also had any typical  
20 trade debt?

21 A. Yes, of course.

22 Q. And just so a jury understands if they  
23 were reading this, trade debt just means the  
24 ordinary debt that a business acquires through the



1       ordinary operations of its business?

2           A.     Right. Ordinary course payables, right,  
3       and accruals, right.

4           Q.     So that debt would have had a right  
5       under the bankruptcy proceeding to be paid only  
6       after the banks were paid, the  
7       debtor-in-possession financing was paid, and  
8       possibly after any additional Houlihan fees were  
9       paid?

10          A.     Yes.

11          Q.     And the ESOP then owned the equity  
12       interest, right?

13          A.     Yes.

14          Q.     Okay. So when you say in your -- in  
15       your sentence here that nothing in the deal --  
16       there was nothing in the deal for the ESOP, the  
17       idea is that there was no realistic possibility in  
18       your view that the ESOP, as the shareholders,  
19       would receive any money through the J.H. Whitney  
20       deal?

21          A.     According to everything in the record  
22       that I've read including descriptions of the  
23       desires of Whitney written up by -- by Houlihan  
24       suggested exactly that.

1 Q. Okay. And you also say that there was  
2 nothing in it for Lee Morgan, correct?

3 A. Yeah. There would have been -- there  
4 would have been nothing. The 54 million would  
5 have covered the debt and -- and some Houlihan  
6 fees, and there might have been some small --  
7 relatively small incremental available capital to  
8 deal with other -- other -- other credit.

9 Q. You understand that Mr. Morgan, in  
10 addition to any equity interest he had, also held  
11 subordinated debt associated with the 2003  
12 transaction?

13 A. I do.

14 Q. Okay. And when you say here that  
15 there's nothing in it for Lee Morgan, is it your  
16 view that, as a practical matter, Lee Morgan  
17 shouldn't have expected reasonably to get any  
18 money on that subordinated debt?

19 A. Yes.

20 Q. And so first of all, you don't know what  
21 Lee Morgan was thinking, correct?

22 A. No way I could.

23 Q. But from an objective financial  
24 prospective for Lee Morgan, he's better off

1       rejecting a sure zero personally and pursuing a  
2       slim chance, whatever the chance may be, of a  
3       payout through -- by continuing to look for  
4       prospective buyers?

5           A.       If the question is was Lee Morgan  
6       personally better off to hope for some --  
7       something else besides this for some recovery of  
8       what he -- what he had on -- in terms of  
9       obligations, yes.

10          Q.       It was possible, for example, that The  
11       Antioch Company may have turned around its sales;  
12       and if it would have done so, that may have  
13       increased the interest of prospective buyers in  
14       the market?

15          A.       At that time? Is that what you're  
16       saying?

17          Q.       Sure. As they were sitting on June 5,  
18       2008, it was possible that the Antioch sales could  
19       have improved dramatically, correct?

20          A.       It was remotely possible that something  
21       like that could happen, but very remotely at that  
22       time.

23          Q.       You understand -- step back. The other  
24       debt holders, meaning the other people who held

1 ESOP notes and the other people who held  
2 subordinated notes, sat in the same position as  
3 Lee Morgan as to the likelihood of their getting  
4 any money from the J.H. Whitney deal, correct?

5 A. It's my understanding that all the  
6 subordinated debt including the ESOP notes were  
7 Pari-passu. So yes, they were in the same  
8 position.

9 Q. Turn to page 19.

10 A. Of...

11 Q. Of your report. That would be helpful  
12 if I told you the right document.

13 A. No. We got there.

14 Q. You say in the paragraph that begins "In  
15 early 2008" -- do you see that paragraph?

16 A. Yes, I do.

17 Q. There's a sentence that the line begins  
18 "certainly must undoubtedly." Do you see that?

19 A. No. But also -- already I don't like  
20 the sentence, but okay.

21 Q. On the far left, the word begins with  
22 "certainly."

23 A. Yeah, I do.

24 Q. You're describing, in the beginning of

1     that sentence, Mr. Morgan's insistence on being  
2     paid his debts in Candlewood marketing efforts,  
3     and then you say, quote, "certainly must  
4     undoubtedly have had a chilling effect on  
5     Houlihan's efforts." Did I read that phrase  
6     correctly?

7             A.     You have.

8             Q.     And my question to you is, are you aware  
9     of any specific facts in the record that suggest  
10    that any prospective buyer refused to provide a  
11    letter of intent or other offer to The Antioch  
12    Company based upon the fact that Mr. Morgan would  
13    refuse to forfeit his debt or that Candlewood was  
14    engaging in its various marketing efforts?

15            A.     I'm clearly making a presumption there,  
16    so I have no factual evidence of that fact. I'm  
17    just piecing together what I believed would be the  
18    impact.

19            Q.     You're making your best guess?

20            A.     I'm making my best assumption, right.

21            Q.     You're not aware of any facts that show  
22    that that's true?

23            A.     Not specifically, no.

24            Q.     Then in the next paragraph, you refer to

1 questions that were posed to witnesses about  
2 whether they were confused by the dual-track  
3 process. Do you see that?

4 A. I do.

5 Q. And you say in the third sentence "These  
6 investors were not likely confused." Why did you  
7 say that?

8 A. What I'm -- what I'm referring to is how  
9 the question was posed by the lawyers in the  
10 testimony and how the question was answered and  
11 very specifically that. And what my statement is,  
12 that these are very -- private equity folks are  
13 very bright people. They're lawyers and financial  
14 professionals and very experienced people at the  
15 senior levels.

16 So I don't think they were confused in  
17 the sense that they weren't sure what was going on  
18 in terms of what -- what the process was.

19 The question -- really what I'm trying  
20 to address is if we knew that there was a  
21 secondary process going on with -- in respect to  
22 -- involving an insider who had substantial  
23 influence in the company, that that -- that might  
24 be something that would -- would result in them

1 deciding not to go too far on this, noting that in  
2 addition to that that there were only a handful of  
3 bids that ever did come in out of many, many -- of  
4 a very large distribution, so...

5 Q. In effect, in your next sentence, you  
6 say, beginning with the word "however," (as read)  
7 However, they may have been -- they may have been  
8 reluctant to become engaged and continue past the  
9 preliminary screening. And that sentence goes on,  
10 but did I read that portion accurately?

11 A. You have.

12 Q. Okay. Again, are you aware of any  
13 specific facts in the record that show that  
14 specific investors were reluctant to proceed due  
15 to this -- these facts that you just identified  
16 and described to me?

17 A. Well, first, I haven't described facts  
18 to you. What I said is that they may have been  
19 reluctant. So the locution is clearly my  
20 assumption that may have -- that this may have  
21 occurred. That's all I'm saying.

22 Q. But you're not aware of any facts in the  
23 record that show that it did occur?

24 A. No.

1           Q.     Just so we're clear, when you say "no,"  
2     you're agreeing with me; there's no facts in the  
3     record you're aware of?

4           A.     I'm agreeing with you.

5           Q.     Regarding Lee Morgan and Candlewood's  
6     involvement in the process, is it fair to say that  
7     the most you can opine is maybe there would have  
8     been a better deal but for Candlewood and Lee  
9     Morgan's actions?

10          A.     I don't think I'm saying that at all.  
11     What I'm saying is -- well, yeah, let's go back on  
12     that. There could have been a better deal, and  
13     the -- what I considered to be un-executable  
14     offers, including in my view the GSI (sic) offer,  
15     that -- that that had the effect of -- of taking  
16     up a lot of -- a lot of the -- the -- the parties,  
17     including the Special Transaction Committee's  
18     thinking about what to do.

19                 And, in fact, there are many  
20     circumstances in the documents where -- where they  
21     are going back and readdressing, you know, We want  
22     to have a consensual deal, and so on and so  
23     forth.

24                 So what I'm saying is it was -- it was



1 a -- a substantial distraction. And in addition  
2 to that, I'm saying that that process which had --  
3 which was an undercurrent throughout the '07/'08  
4 period, particularly after they went into phase 2  
5 with Houlihan to the distressed buyers, that that  
6 process certainly in that time frame was, I  
7 thought, burdensome.

8 And I believe that anybody who really  
9 understood valuation of the business and where  
10 things were would never have spent the time to  
11 even look at it. That's my view.

12 Q. I don't believe that answers my  
13 question. My question simply is that you can't  
14 identify any specific deals that failed to close  
15 due to the actions of Lee Morgan or Candlewood  
16 Partners; is that true?

17 A. I can't except I would say that the  
18 action on the Whitney deal was -- the reason that  
19 occurred in my view was -- in May/June -- the  
20 rejection of the Whitney deal occurred because  
21 there was this presumption that somehow there was  
22 some better deal out there that was perpetuated,  
23 you know, between Mr. Morgan and Candlewood and  
24 the Special Transaction Committee and the board,

1       that somehow they thought that there was somehow a  
2       way to get value to all the constituent parties.

3               And if one understood that the best deal  
4       was really already laid out and these other -- you  
5       know, these other parties -- the sub debt and the  
6       equity was going to be probably a hundred percent  
7       impaired, that maybe the best thing to do for the  
8       company would be to go through the 363 sale with a  
9       substantial sponsor who had the ability to -- to  
10      finance the company appropriately and so on, in  
11      addition to which the 363, if we could have come  
12      in at 54 million as the committed bid, would  
13      potentially be just the starting point on what the  
14      total recovery might have been.

15           Q.     Let me ask you about the ESOP trustee.  
16      You understand that that was Evolve?

17           A.     I do.

18           Q.     And that Ken Lenoir was in the lead for  
19      Evolve?

20           A.     I do.

21           Q.     Do you know whether Evolve and Ken  
22      Lenoir were well qualified for that position?

23           A.     I can't say. The -- there are documents  
24      and there's emails between members of Evolve

1 talking when Reliance -- when they were being --  
2 looking at being hired after Reliance resigned --  
3 it seemed to indicate to me they didn't have a lot  
4 of experience in these -- in complex  
5 transactions.

6 And there are other things in there that  
7 would indicate to me that they -- they certainly  
8 had a concern also about -- about the fees, which  
9 is not the question you've asked, but my -- my --  
10 my reading of that was that they were looking to  
11 this as a way of creating kind of a bellwether for  
12 themselves as a firm and -- which indicated to me  
13 that they didn't have deep experience in complex  
14 transactions.

15 Q. Which documents are you referring to?

16 A. There are documents where -- it's an  
17 email document between the Evolve people -- the --  
18 you know, it's Ken Lenoir and a couple other  
19 people within Evolve including one of their  
20 lawyers.

21 The document would have been somewhere  
22 at the late '07 period or whenever Reliance had  
23 left and whenever they were starting to look for  
24 -- they were starting -- they were looking to --

1     they put their bid out. It was four times the fee  
2     that Reliance was charging. So I'd be happy to  
3     identify it exactly for you, but I -- I know the  
4     document.

5           Q.     Have you ever seen any documents that  
6     list or describe Evolve's qualifications?

7           A.     I'm trying to think. I don't think I  
8     have. I just remembered that one document.

9           Q.     Relating to the amount of fees that  
10    Evolve was going to be charging?

11          A.     Not just the fees, but there -- there --  
12    there was a list of reasons why they wanted to do  
13    this. And one of the reasons was -- (A), was  
14    revenue, because the fees were substantially  
15    higher than Reliance; and (B), because this was to  
16    be something that they thought they could hang  
17    their hat on in going forward as a -- as a -- as  
18    an indication of their expertise.

19          Q.     And that would be described in a  
20    document that you produced as part of the  
21    discovery process in this case?

22          A.     Yes. It was in the -- in the document.

23          Q.     Do you know whether Evolve had a  
24    financial advisor?

1           A.     They did.

2           Q.     Who was that?

3           A.     I think it was Prairie Capital at the  
4 time.

5           Q.     I'll represent to you that it was. Any  
6 reason -- what do you know about Prairie Capital's  
7 qualifications?

8           A.     Very qualified. They're a well known  
9 firm.

10          Q.     What type of advice was Prairie Capital  
11 providing, if you know?

12          A.     They were a valuation firm in this  
13 business respect particularly.

14          Q.     Okay. And do you know if Evolve had a  
15 law firm engaged to represent it?

16          A.     I believe they did.

17          Q.     Do you know who they had?

18          A.     I don't recall offhand.

19                 (ATTORNEY FAGUE LEFT THE ROOM.)

20          Q.     Are you aware of any facts that suggest  
21 that Evolve did not understand the nature of its  
22 actions relating to terminating the board?

23          A.     I have -- there's no facts that I know  
24 of that discuss their not understanding what they

1       were doing, so from that point... that I know.

2           Q.       Turn, if you would, back to the article  
3       that you -- the articles, rather, that you had  
4       written in Exhibit 803. I'd like you to turn to  
5       page 246136 again.

6           A.       Okay.

7           Q.       It's a page we've looked at twice, and  
8       here's the third time.

9           A.       Okay.

10          Q.       At the bottom of the page, the very  
11       bottom, you say "Have more than just you in the  
12       decision loop." Then the next sentence is "There  
13       are numerous advantages to having a team approach  
14       to a transaction. Chief among these are the  
15       ability to tell the other party that you need to  
16       discuss their proposals with others in your team.  
17       This immediately takes the pressure off any  
18       across-the-table direct encounters where a snap  
19       response is anticipated. It also imposes a sense  
20       of uncertainty for the other party as he is forced  
21       to think through his position in terms of how and  
22       who within the group might respond."

23                   First of all, did I read that  
24       accurately?

1           A.       Yes.

2           Q.       Okay. And this is advice that you  
3 provide to your prospective clients?

4           A.       I wrote this a fairly -- a long time  
5 ago, but I -- I don't think I would retract any of  
6 it at this point.

7           Q.       And, in fact, you provided it at least  
8 as recently as 2007?

9           A.       It seems like a long time ago.

10          Q.       It does. Why is it that you provided  
11 that advice?

12                   (Attorney Fague entered the room.)

13          A.       It just -- just it's my experience  
14 that -- that being able to really -- really break  
15 things down and knock them around and have other  
16 people looking at it is just a better way to do  
17 it. It also takes the pressure off in  
18 negotiations where you think you have to get back  
19 to somebody right away. It just -- it's just a  
20 good process in my view.

21          Q.       Why do you consider it to be desirable  
22 to impose a sense of uncertainty regarding who in  
23 the group might respond to a proposal?

24          A.       Mostly because it's difficult... I'm

1     trying to think what my thinking there is. I  
2     think what I meant and what I mean is that it's a  
3     way of not -- essentially not negotiating against  
4     yourself, and -- and it allows -- I'm trying to  
5     think what I -- what I really meant there. It  
6     seemed like really good advice, but I'm struggling  
7     to give you an articulate read on that.

8             But mostly because it -- it allows a  
9     sense that whatever they've offered across the  
10    table is not necessarily going to be taken and  
11    there might be others inside the -- inside the  
12    group that's reviewing the offer, if it's an offer  
13    that's the -- or whatever the negotiation point  
14    is.

15            It provides a -- it -- you know, it kind  
16    -- it's just a way of getting more cards turned  
17    over on the table. So I guess I'm not being  
18    terribly articulate about it, but I agree with  
19    it. That's the sentiment.

20           Q.     Turn, then, in your report to page 16.

21           A.     Okay.

22           Q.     In the middle of the page, there's a  
23    sentence -- let me step back. You, at the top of  
24    the page, are describing the fact that the sales



1 of the company had fallen dramatically between  
2 2004 and 2006, right?

3 A. I say at first marginally, and then by  
4 2006 dramatically, yes.

5 Q. Fair enough. And then you say later in  
6 that subsection "Therefore, two choices remain:  
7 Sell the business, or find a way to eliminate the  
8 ESOP through a management buyout." Did I read  
9 that accurately?

10 A. You have.

11 Q. Would you agree that it was prudent for  
12 the Special Transaction Committee to consider the  
13 two choices that were available to it?

14 A. Yeah. I mean, I think, initially to  
15 figure out what was going to -- what was really  
16 possible is certainly a reasonable approach.

17 Q. And you have described at other places  
18 in your report that some of the proposals being  
19 made by Lee Morgan and Candlewood were two times  
20 or greater the value than the proposals that were  
21 being made by the parties identified by Houlihan  
22 Lokey, correct?

23 A. Yes. Yes, I have.

24 Q. You would agree with me, wouldn't you,

1       that the only way for the Special Transactions  
2       Committee to determine whether the proposals being  
3       made by Lee Morgan were executable would be for  
4       the Special Transactions Committee to read them?

5           A.       Yes.

6           Q.       So you don't deny that it was reasonable  
7       for the Special Transactions Committee to read the  
8       proposals that came from Lee Morgan when they came  
9       in the door?

10          A.       I don't deny them.

11          Q.       And Mr. Scheier discussed with you the  
12       fact that the Special Transactions Committee  
13       rejected three of those proposals. Do you recall  
14       that?

15          A.       I do.

16          Q.       And you don't disagree with the Special  
17       Transactions Committee to reject those proposals,  
18       correct?

19          A.       Correct.

20          Q.       Let me show you a document that has been  
21       previously marked as Exhibit No. 68. These are  
22       notes that appear to be notes from a Special  
23       Transactions Committee that was -- a committee  
24       meeting that was on November 7th, 2007. Have you

1       seen these notes before?

2           A.       I think so.

3           Q.       I believe, but I'm not sure, they were  
4       made by Kim Lipson-Wilson. So take that for what  
5       it's worth, or you don't have to take that for  
6       anything at all. But what I want you to turn to  
7       is page 70.

8           A.       Okay.

9           Q.       Towards the bottom, there is a heading  
10       that says "HLHZ Recommendations." Do you see  
11       that?

12          A.       I do.

13          Q.       And you understand HLHZ to be --

14          A.       Houlihan.

15          Q.       -- Houlihan Lokey?

16          A.       I do.

17          Q.       And you'll see there are a series of  
18       bullet points underneath the Houlihan  
19       recommendations, one of which was "Keep working  
20       with Lee." Do you see that?

21          A.       I do.

22          Q.       And I believe you told me earlier that  
23       it would be part of the role of an investment  
24       banker to advise clients regarding who they should

1 communicate with, correct?

2 A. Yes, I do.

3 Q. And so this is the type of advice that  
4 would be typical for an investment banker to give  
5 regarding whether or not to be communicating with  
6 somebody like Lee Morgan?

7 A. That's what they gave them, so, yeah.

8 Q. That's the type of advice that was  
9 within the realm of advice to be provided by an  
10 investment banker?

11 A. Yeah. I mean, yeah. I mean, the only  
12 qualification I would say under that is if I  
13 thought there was no reasonable way to do what  
14 they were going to do and they wanted to do, that  
15 I -- that I may -- I may decide that that's not --  
16 that's not good advice.

17 Q. Are you aware of any time that Houlihan  
18 retracted this advice and advised The Antioch  
19 Company to stop working with Lee?

20 A. I'm not aware of that.

21 Q. Do you know whether CRG's role included  
22 management of the sales process in any way, shape,  
23 or form?

24 A. I don't believe they do.

1 Q. Okay.

2 A. They were there as chief restructuring  
3 officer and then temporary CFO at one point,  
4 but...

5 Q. Let me show you then a document that's  
6 been previously marked as Exhibit 767. It's a  
7 letter that is signed by CRG and The Antioch  
8 Company by Nancy Blair dated April 22, 2008. Is  
9 this a document you've seen before?

10 A. Yes, I have.

11 Q. The first bullet point identifies one of  
12 CRG's responsibilities as "Leading the company's  
13 efforts towards completion of a recapitalization  
14 or change of control transaction." Do you see  
15 that?

16 A. I do.

17 Q. Does this refresh your recollection that  
18 CRG had some responsibilities towards advising the  
19 company regarding how to manage the sales process?

20 A. I certainly didn't read it that way. I  
21 read that they were a constituent of the inside  
22 process, but that they -- when I first understood  
23 your question, I understood that to be that they  
24 were involved in the selling process itself in

1       which the banker would have been.

2               To the extent that they were -- they  
3       were active in the company helping them to -- then  
4       clearly, yes, I agree, but not as a sales agent of  
5       the company. But that's the way I -- the way I  
6       read your -- understood your question. Sorry.

7           Q.     Fair enough. Sorry if my question was  
8       confusing, because it may have been, but just so  
9       I'm clear that we have a clear record here, it was  
10      your understanding, first of all, that CRG was not  
11      going to be contacting prospective buyers in the  
12      market in the way that Houlihan was doing?

13          A.     That's correct.

14          Q.     But that CRG had some type of  
15      responsibility within the company to lead its  
16      efforts towards a completion of a transaction?

17          A.     That's what it says here, so, yes.

18          Q.     Did you understand that CRG had some  
19      responsibilities in that role to advise the  
20      company regarding how to maintain or operate a  
21      sales process?

22          A.     I certainly don't have that  
23      understanding. That may be true, but I'm -- I'm  
24      reading it that they were going to help them work

1 with -- I guess with the investment bankers and  
2 whatever else they needed to provide.

3 But I'm not sure... I'm not making the  
4 connection that they're involved in the sale  
5 process; I'm making the connection that they're at  
6 the company's side in support of the sale process.

7 Q. What do you understand CRG's  
8 responsibilities would be in light of this  
9 paragraph, then?

10 A. There are a substantial amount of  
11 information requirements, modeling requirements,  
12 scenario, development requirements. There's a lot  
13 of reporting involved in terms of things that  
14 aren't just necessarily in financial statements  
15 about what's going on in the company, and my  
16 understanding was that's -- they were doing that.

17 MR. SHARKEY: Let's go off the record.

18 (A brief break was taken.)

19 Q. (By Mr. Sharkey) Back on the record.  
20 Mr. Greenberg, if you would, turn to page 19 of  
21 your report.

22 A. Okay.

23 Q. At the top of the page in the paragraph  
24 that had continued on from the prior page, there's

1 a phrase that refers to "Candlewood's apparent  
2 unfettered access to board of directors." Do you  
3 see that?

4 A. I do.

5 Q. I want to ask you some questions about  
6 that. First of all, you understand that  
7 Candlewood made a number of proposals on behalf of  
8 Lee Morgan to The Antioch Company, correct?

9 A. I do.

10 Q. And a company that has made a proposal  
11 to a company, is it common that they would meet  
12 with a Special Transactions Committee of the  
13 board?

14 A. Yes.

15 Q. So you don't object to the fact that  
16 Candlewood had access to discuss its proposals  
17 with the Special Transactions Committee?

18 A. No objection to that.

19 Q. And do you know whether MWE advised the  
20 company that Candlewood should not have access to  
21 information relating to proposals made by other  
22 third parties?

23 A. I believe I'm aware of that.

24 Q. Okay. And I'm not asking you for a



1 legal opinion here. This is a process question --

2 A. May I get a clarification?

3 Q. Sure.

4 A. Would that have come from -- from Marsha  
5 Matthew as advice by an email? I think that's  
6 what I've read, so I'm just...

7 Q. I believe, yes.

8 A. Okay.

9 Q. And I don't want to ask you about legal  
10 advice provided by MWE, but just as a process  
11 question, as an investment banker, do you agree  
12 that it's appropriate that one party should not  
13 have access to -- one party who's a prospective  
14 buyer should not have access to information  
15 regarding other prospective buyer's  
16 communications?

17 A. Yeah, absolutely not. Agree.

18 Q. Turn if you would to page 21.

19 A. Okay.

20 Q. You say in the third paragraph "In  
21 contrast, Lee Morgan, et al., together with  
22 Candlewood as early as fall of 2007 proposed a  
23 variety of deals to recapitalize and buy out the  
24 company." The question to you is, who is et al.?

1           A.       I think at that time it was just Lee  
2 Morgan, so I would -- I would -- I would certainly  
3 change that.

4           Q.       Okay. On page 22, the first full  
5 paragraph, you again refer to Morgan, et al.?

6           A.       Again, same -- same comment. I would --  
7 I would redact that.

8           Q.       Turn if you would to page 18. Under the  
9 heading "The Dual Path," the second paragraph that  
10 begins with the phrase "The dual path" refers to  
11 two camps with the Special Committee. Do you see  
12 that?

13          A.       Yes.

14          Q.       First of all, was it intended to be two  
15 camps "within" the Special Committee?

16          A.       (Reading) "The dual path, as it was  
17 referred to, created two separate, often  
18 conflicting processes and two camps with the  
19 Special Committee attempting to navigate to a  
20 viable outcome."

21          Q.       So you're not saying there were two  
22 camps within the Special --

23          A.       I am definitely not saying that, no.  
24 The two camps I meant were the dual path on one

1 side and Houlihan, etc., and Mr. Morgan and  
2 Candlewood on the other and that the Special  
3 Committee was attempting to navigate a viable  
4 option.

5 Q. Then on page 20, in the phrase -- in the  
6 paragraph that begins with "Given these kinds of  
7 valuations..."

8 A. Yes, I see it.

9 Q. You discuss the fact that the ESOP notes  
10 were all required to be reasonably guaranteed,  
11 right?

12 A. I did.

13 Q. And you understand that Condor -- there  
14 were a couple different Condor entities who were  
15 engaged to provide some type of surety for these  
16 sub notes?

17 A. I do.

18 Q. And do you understand that Condor  
19 eventually -- neither of those entities ever made  
20 any payments on these sub notes after --

21 A. I understand that, yes.

22 Q. Do you also understand that if Condor  
23 had been solvent and had paid the ESOP notes, then  
24 the company would have owed to Condor the amounts

1       that Condor had paid on the ESOP notes?

2           A.       I think I understand that, yes. I'm not  
3       -- I didn't -- I understood that -- just to be  
4       clear, I understood that there was real issues  
5       relative to the surety itself, that Condor  
6       initially in its initial evolution went into --  
7       into a bankruptcy, and that there was a secondary  
8       entity made up of former Condor principals who  
9       then assumed the assets of -- of the former  
10      Condor, and that there was some unlawful  
11      conveyance issues that -- that came about as a  
12      result of that, and that they were, in effect,  
13      incapable of -- of paying any of the -- the  
14      surety.

15           Q.       As a result of Condor's failure to pay,  
16      the ESOP note holders were creditors of The  
17      Antioch Company in the bankruptcy, correct?

18           A.       Yes.

19           Q.       If Condor would have paid on those  
20      notes, then it's true, as you understand it, that  
21      Condor would have been a creditor of The Antioch  
22      Company in the same amount?

23           A.       Following what you've represented  
24      before, yes, that would be the case.

1           Q.     And you, in the last sentence of the  
2 paragraph we were looking for, say, quote, "This  
3 was certainly more than a background issue for  
4 anyone considering acquiring the company outside  
5 of bankruptcy," close quote.

6                     First of all, Houlihan, in its efforts  
7 to deal with the distressed buyers, was  
8 contemplating potential bankruptcy transactions,  
9 correct?

10          A.     Correct.

11          Q.     So this paragraph's not referring to  
12 Houlihan's efforts to deal with the distressed  
13 buyer market, correct?

14          A.     I'm not sure what your -- what your  
15 question just was.

16          Q.     The sentence I just referred to is not a  
17 reference to any prospective buyer that Houlihan  
18 was bringing to the table such as J.H. Whitney in  
19 the distressed buyer market?

20          A.     I'm not sure that it doesn't in general  
21 terms. What I'm saying in effect was that the --  
22 the -- the issue with the ESOP notes -- in fact,  
23 this even comes up in a comment that I just looked  
24 at this morning from -- that -- from -- actually,

1 from Glen Pollack at Candlewood, that unless -- if  
2 the surety issue on those bonds or the notes  
3 stayed as it was and remained, that it would be  
4 very difficult to do a deal outside of bankruptcy.

5 And so I think I'm -- although not  
6 referring to his comment specifically which was  
7 made in sometime 2007 -- in late 2007, but I'm  
8 referring to also the sense that -- or my  
9 experience that with that type of liability, that  
10 it would be very difficult to do a deal on a  
11 consensual basis at the valuations that were there  
12 particularly since these -- these represent a  
13 fairly substantial potential for litigation and  
14 certainly a very large liability.

15 Q. First of all, are you aware of any  
16 prospective buyer that cited the issues associated  
17 with Condor solvency as a reason for not going  
18 forward with the deal or as a reason for offering  
19 a lower price in a letter of intent?

20 A. Nothing specifically to Condor. Not  
21 even sure that they understood what that -- from  
22 anything that I read that they understood where  
23 that was, dispositionally speaking, but that  
24 certainly Whitney, Marlin -- probably Monomoy as

1 well, but certainly Whitney and Marlin had real  
2 issues with the -- trying to do anything that  
3 would resolve the ESOP notes because of just all  
4 the challenges of trying to do that and some of  
5 the impact it might have in the company, and that  
6 was why the -- one of the reasons that bankruptcy  
7 was a favored outcome.

8 Q. So when you're referring to the  
9 difficulty that J.H. Whitney, Marlin, and Monomoy  
10 had with the ESOP notes, that was a reference to  
11 an out-of-bankruptcy transaction?

12 A. Yes, and the reason to do it in  
13 bankruptcy. But there -- I don't recall any --  
14 any discussion on their part about the surety  
15 issue with the -- with the -- with the ESOP  
16 notes. It may be in there, but I don't recall.

17 Q. The entity who cited some concern about  
18 the Condor issue relating to an out-of-court --  
19 out-of-bankruptcy sale was Candlewood Partners?

20 A. Yeah, actually in November. It's a --  
21 there's a quote in one of the documents in late --  
22 late 2007 that this would -- the surety issue  
23 would certainly confound any -- any attempt to try  
24 to do it outside of bankruptcy. That's a

1       paraphrase, but that's basically what he said.

2           Q.       In terms of out-of-bankruptcy  
3       proceedings that were contemplated, we've already  
4       discussed, right, the reasons that Houlihan's  
5       initial efforts failed; and those were related to  
6       business and financial problems that The Antioch  
7       Company was suffering, right?

8           A.       That's correct.

9           Q.       And then the other entity who was  
10      contemplating a potential out-of-bankruptcy  
11      transaction was Candlewood Partners and Lee  
12      Morgan, correct?

13          A.       Correct.

14          Q.       And you've already discussed the reasons  
15      that their various offers didn't close or were  
16      un-executable, correct?

17          A.       I have, yes.

18          Q.       Can you describe for me the conditions  
19      in the investment markets during 2007 and 2008?

20                 Actually, I'll withdraw that question  
21      and clarify. I'm talking specifically to  
22      investors who are interested in acquiring  
23      businesses in the sort of small to mid market  
24      area. So I'm not talking about the stock market



1 or the banking market.

2 A. I understand. There was some softening  
3 in '07 as I recall. I was with LudlowWard Capital  
4 Partners at the time as a partner there. We saw  
5 more softening in the credit market certainly,  
6 although deals were certainly being transacted in  
7 '07.

8 By the time '08 came around, certainly  
9 as we went into the early fall, the -- it was  
10 getting pretty ominous, and this was before the  
11 big -- the big crash, but things were seizing up,  
12 credit was getting very hard.

13 The investment markets in privately held  
14 -- private equity business is -- is in large  
15 part -- a lot of their liquidity to do deals comes  
16 from credit and bank deals, mezzanine loans,  
17 structured finance deals, and -- as a part of what  
18 their -- how they finance their deals.

19 That started to get fairly soft and then  
20 completely seized up by the time you hit November  
21 of '08. The phones just stopped ringing. I mean,  
22 nobody could do a deal in that period.

23 Q. Just to be sure I understand and the  
24 jury understands, the private equity investors --

1     when they look to buy a company, they borrow money  
2     to fund some or all of the acquisition price that  
3     they agree to?

4           A.     Often but not always.  Sometimes they  
5     will, as Whitney was proposing at least in the  
6     documents from Houlihan -- were going to not lever  
7     their deal.

8                   But typically what they would do in that  
9     circumstance is they would then lever out later  
10    on.  They would do equity recap with leverage  
11    later on as the company became more stable and  
12    more dependable in terms of its cash flows.

13                   But typically back then, debt/equity  
14    packages were -- could be anywhere from 4:1 debt  
15    to equity.  And today, they're roughly half at  
16    50/50 for most private equity deals.  So the  
17    answer is yes, but not always.

18           Q.     I'm sorry.  What was 4:1?

19           A.     Debt to equity.  Back then, you saw  
20    deals even more leveraged than that where you'd  
21    have, you know, four parts debt for every one part  
22    equity, essentially.

23                   Today that's much more modified.  You're  
24    seeing more deals where it's 1:1 debt to equity in

1 terms of the purchase package -- financing  
2 package.

3 Q. Is debt to equity a measure that is  
4 commonly used by businesses to determine whether  
5 they are overleveraged?

6 A. Yes. As a -- the way I'm using it is as  
7 a -- as a -- as a sources and uses comment in  
8 terms of the purchase price, how that purchase  
9 price is funded. In the way you just mentioned  
10 it, it's really a function of a -- it's a -- it's  
11 a leverage ratio, that you would look at a company  
12 to see how leveraged they were, so...

13 Q. And 4:1 in 2007/2008 was considered an  
14 acceptable leverage ratio?

15 A. For -- for a sponsor, meaning a private  
16 equity fund that had deep reserves in capital, the  
17 lenders, both senior structured and mezzanine,  
18 would go along with that to the extent that there  
19 was a belief that the private equity fund would be  
20 able to -- had the resources to pony up capital if  
21 it was required.

22 In non-sponsored deals, you wouldn't see  
23 that typically, but certainly in sponsored deals  
24 where there was a large private equity fund with

1 millions of dollars of capital available to it,  
2 you would see that.

3 Q. In non-sponsored deals, what type of  
4 leverage issues would you see?

5 A. It just really depends. I mean, you  
6 know, it really depends. You know, it's very  
7 different. If you had a strategic buyer, there's  
8 other advantages that exist in terms of potential  
9 hard dollar synergy on cost, sales integration,  
10 things like that.

11 If it's a management buyout, trying to  
12 overleverage a management buyout is usually not a  
13 good idea because you still have additional  
14 resources.

15 Q. In a management buyout, then, by  
16 example, what type of leverage ratios would you  
17 see?

18 A. I certainly wouldn't see 4:1 typically.

19 Q. 2:1? 3:1?

20 A. You're just getting down into looking at  
21 what the funding debt -- what the EBITDA levels  
22 would be -- you know, depending on the company,  
23 how rich the EBITDA contribution was. You know, I  
24 wouldn't -- I mean, in today's market, you'd see

1       somewhere between 2-1/2 and 3 times EBITDA kind of  
2       levels for debt.

3               You know, back then, you might see a  
4       little bit more. But a management buyout is  
5       different. It doesn't have the equity cash  
6       resources that a large private equity sponsor has  
7       to bail out a problem. And so they're treated  
8       differently and looked at differently in the  
9       marketplace.

10       Q.     Are today's numbers sort of historically  
11       conservative?

12       A.     You know, I was just looking recently --  
13       we get reports from PitchBook and Capital IQ. We  
14       use those services. You know, the recent deals  
15       since January through June are more or less at,  
16       you know, a little over 50 percent debt in a deal.

17               It's certainly conservative relative to  
18       2006, '5, '4, '3, yeah. So I think that's --  
19       certainly in the decade worth of time, it's  
20       conservative.

21       Q.     And let me ask you a hypothetical. A  
22       company has \$20 in cash --

23       A.     Right.

24       Q.     -- and then the fair market value of its

1 operations assets and goodwill is \$80. Okay?

2 A. Mm-hmm.

3 Q. No debt. The company's market value: a  
4 hundred dollars, right?

5 A. Not necessarily. It would depend on  
6 what the -- what -- I mean, you could add the cash  
7 back. You might be able to do it that way on a  
8 cash free/debt free basis.

9 On the other hand, depending on what --  
10 the working capital requirement, that cash might  
11 be such that in the current assets, it is within a  
12 reasonable current ratio or a quick ratio basis,  
13 that you wouldn't consider that plus dollars to  
14 the -- to the equity of the company.

15 Q. But if it's excess cash for the  
16 company --

17 A. If it's surplus cash above the working  
18 capital requirement, I would agree.

19 Q. Suppose the company then wastes \$10  
20 worth of cash. So it now it has \$10 in cash, and  
21 the value of its business as a going concern then  
22 declines from \$80 to \$70. Okay? The total market  
23 value of the company is now \$80, right?

24 A. Okay. I'm trying to see where you're

1 going, what you're trying to ask me.

2 Q. Well, in that example, the -- if there  
3 was a claim that the company had somehow been  
4 damaged by the waste of the cash and the decline  
5 in market value, that the total of those would be  
6 \$20 for those damages, correct?

7 A. That would be the delta that -- based on  
8 your example, yes.

9 Q. Your method would subtract the two  
10 market values, namely \$100 minus \$80, the change  
11 in the total market value, right, and then you add  
12 in the waste?

13 A. I'm really not sure what...

14 Q. Here's the question: You have  
15 determined what the decline in the market value is  
16 of The Antioch Company between two periods and  
17 said that those were damages, right?

18 A. From the -- from the Whitney offer to  
19 the CRG valuation. Let me also add some  
20 additional thought to that. The Whitney offer  
21 is -- I'm assuming was -- if they got through the  
22 diligence at that value, was a stalking-horse bid  
23 offer -- committed bid offer which may have been  
24 higher in an auction environment as well, so --

1 just to be clear.

2 Q. You don't know whether it would be  
3 higher or not, though, do you?

4 A. I was speculating that it could be  
5 higher. I wasn't certainly saying that it would  
6 be.

7 Q. You then, to the change in market value,  
8 add in the corporate waste amounts that you've  
9 identified, correct, of \$6 million?

10 A. That was an incremental number in there  
11 for fees and things, yes.

12 Q. Those expenditures of cash on those fees  
13 would have been occurring at the same time as the  
14 decline in market value, right?

15 A. Presumably.

16 Q. So the decline in market value between  
17 the two periods would already take into account  
18 the fact that the company had allegedly wasted \$6  
19 million in cash, wouldn't it?

20 MS. ANDREW: Objection.

21 A. Yeah, I mean, if we assume that the \$6  
22 million was expended, by example -- I'm not saying  
23 it did -- through to the \$54 million Whitney offer  
24 as an example? That it's already discounted in



1     that value, and the difference between that value  
2     and the value CRG came up with?  If that's what  
3     you're getting at, that that would already have  
4     been consistent of that valuation?  Is that what  
5     you're saying to me?

6           Q.     All right.  Well, I'm saying some of the  
7     waste that you've identified occurred between the  
8     J.H. Whitney offer and the CRG valuation; is that  
9     true?

10          A.     I've identified those \$6 million of  
11     fees.  If that -- if those fees were already --  
12     I'm trying to make this in a reasonable statement.  
13     If they were already part of the value associated  
14     with the \$54 million offer, then that's already  
15     discounted, and then I would agree with you, if I  
16     think what you're saying -- versus the 31 to 38  
17     million-dollar offer that was -- not offer,  
18     sorry -- the valuation that CRG did for the  
19     bankruptcy.

20          Q.     So presumably, any waste of cash that  
21     occurred between the CRG offer would have already  
22     been reflected in the amount that CRG had proposed  
23     in its letter of intent?

24          A.     Yeah, I'm certainly not...

1 Q. Right?

2 A. I'm certainly not suggesting that  
3 there's...

4 MS. ANDREW: I think you misspoke.  
5 CRG's letter of intent?

6 MR. SHARKEY: Thank you. I misspoke  
7 badly.

8 A. I understand what you meant. You meant  
9 the CRG valuation.

10 Q. (By Mr. Sharkey) Yes. So let's start  
11 over. To the extent there was corporate waste  
12 before the J.H. Whitney offer, what you've told me  
13 is the J.H. Whitney offer would have already  
14 incorporated that corporate waste in the \$54  
15 million value, correct?

16 A. Yeah. It was a valuation to acquire the  
17 entire company. I think there was some question  
18 as to whether or not, if I recall, in the LOI --  
19 and there wasn't necessarily agreement between  
20 Whitney and its attorney, that that might also be  
21 -- not be a cash free deal, but it -- but might --  
22 it might also include cash. But I -- that was one  
23 thing that came up.

24 Q. But then you'd agree with me that to the

1        extent that \$6 million in waste occurred between  
2        the J.H. Whitney deal -- I'm sorry -- the  
3        J.H. Whitney letter of intent and the GSC  
4        proposal, that the waste of cash would be taken  
5        into account in terms of the difference between  
6        those two amounts?

7            A.        I'm agreeing that it would have -- the  
8        \$54 million would have discounted for that  
9        already --

10           MR. GENTRY:    You said GSC.

11           MR. SHARKEY:    GSC valuation.

12           MR. GENTRY:    CRG.

13           MR. SHARKEY:    CRG, sorry.    Thank you  
14        very much.    I butchered it.

15           Q.        (By Mr. Sharkey)    To the extent there  
16        was any wasted cash between the J.H. Whitney  
17        letter of intent and the CRG valuation, that  
18        wasted cash would be taken into account in terms  
19        of the difference between those values?

20           A.        Provided that the -- the Whitney offer  
21        was a value for a 100 percent of the assets of the  
22        company at the time as the valuation, then I would  
23        agree that's correct.

24           MR. SHARKEY:    Okay.    I have no further

1 questions at this time, so let's go off the  
2 record.

3 (Off-the-record discussion.)

4 CROSS-EXAMINATION

5 BY MR. KNOTH:

6 Q. Mr. Greenberg, my name's Tom Knoth with  
7 the law firm Thompson Hine, and I've got three of  
8 the outside directors I'm representing today --  
9 Malte von Matthiessen, Dennis Sanan, and Jeanine  
10 McLaughlin.

11 I'm going to try to avoid going over a  
12 lot of the same things. I'll ask some questions  
13 about things that have been covered and then some  
14 other new areas hopefully.

15 Let me start off with the damages  
16 calculations that you were talking about before.  
17 And I think you indicated that there were two  
18 categories of quantifiable damages; is that right?

19 A. I believe I did, yes.

20 Q. And one is the difference between the  
21 amount of the J.H. Whitney offer and the CRG  
22 valuation?

23 A. Those are the benchmarks I referred to,  
24 yes.

1 Q. And that was, I think you said,  
2 somewhere between 16 and 23 million dollars,  
3 right?

4 A. If one doesn't make any conclusion about  
5 what would have happened in the 363 auction.

6 Q. Right. Or the other way, what would  
7 have happened in the due diligence with the  
8 J.H. Whitney deal and that J.H. Whitney would have  
9 reduced its purchase price as well?

10 A. That's certainly possible.

11 Q. And the J.H. Whitney deal had some  
12 adjustments as part of it, too?

13 A. Working capital adjustments. Pretty  
14 typical.

15 Q. And we don't know which way those would  
16 have gone?

17 A. No way to know.

18 Q. Okay. I want to make sure I understand  
19 your testimony, and correct me if I'm wrong. I  
20 believe what you're saying is that the  
21 J.H. Whitney deal should have been accepted,  
22 right?

23 A. That's correct.

24 Q. And that the board had decided to accept

1       that deal, right?

2           A.       They did.

3           Q.       And that Ken Lenoir terminated the board  
4       and thereby prevented the deal to go forward; is  
5       that right?

6           A.       That's right.

7           Q.       But if Ken Lenoir had not terminated the  
8       board, the J.H. Whitney deal would have gone  
9       forward and would have been concluded at somewhere  
10      near \$54 million as a stalking horse in the 363  
11      sale?

12          A.       That's my presumption, yes.

13          Q.       Okay. And if that had happened, there  
14      would be no damages for that category of  
15      quantifiable damages that you've laid out,  
16      correct?

17          A.       Yeah. I'm -- what I'm -- what I'm  
18      assuming was that there was a fair value of \$54  
19      million at the time, you know, plus or minus  
20      working capital adjustments and however they  
21      wanted to handle the cash; and that if that went  
22      forward, that was the fair value for the company  
23      at the time.

24          Q.       Now, Mr. Sharkey showed you some prior

1 letters of intent by Whitney and Marlin. Do you  
2 remember those?

3 A. I do.

4 Q. Is it your position that the Special  
5 Transaction Committee should have accepted one of  
6 those prior letters of intent?

7 A. No, not necessarily. These things get  
8 negotiated. They have a -- they have a shelf  
9 life, for certain, in terms of that; but they do  
10 get negotiated, and they -- and competitive  
11 pressure does result often in a better offer,  
12 which I believe it had.

13 Q. Would you have been critical of the  
14 Special Transaction Committee if they had accepted  
15 the \$44 million proposal by Whitney in March of  
16 2008?

17 A. That's a good question. It's hard for  
18 me to say. I mean, you know, the -- if the \$44  
19 million was a fair value offer competitively  
20 worked by Houlihan -- if it was the first  
21 over-the-table offer, yeah, I would be critical.

22 If it was an offer that had resulted in  
23 -- from, rather, a fair amount of negotiation and  
24 -- and really working -- working both sides of it,

1       then -- then I would -- I wouldn't be critical of  
2       it.

3           Q.       Let's assume for purposes of discussion  
4       that it was the latter, that it was -- had been  
5       further negotiated, and it was an offer that you  
6       would not be critical of. Okay? So let's assume  
7       that. And then let's further assume that at that  
8       time, the Special Transaction Committee said,  
9       Okay, we're going to go ahead with this 44 million  
10      Whitney letter of intent. And then further assume  
11      that Ken Lenoir at that time said, No, I want to  
12      terminate the board now. Okay?

13                  So assuming all that, using your damage  
14      methodology, would you say, then, that the damages  
15      would have been the 44 million minus the CRG  
16      valuation in November?

17           A.       Under that hypothetical, I think I'd  
18      have to. I couldn't conclude one without  
19      concluding the other. That would be inconsistent.

20           Q.       So the fact that the deal improved by  
21      \$10 million, according to your analysis, would  
22      lead to an additional \$10 million damages even  
23      though the 44 million letter of intent by Whitney  
24      might have been an acceptable letter of intent at



1       that point?

2           A.       Yeah, if one accepts the conditions of  
3       all that, sure.

4           Q.       Now, the second category of quantifiable  
5       damages that you're claiming has to do with the  
6       professional fees of \$6 million; is that right?

7           A.       Yes, as an incremental... Yes, yeah.

8           Q.       I don't want to go over everything that  
9       was discussed yesterday and today about that. I  
10       just want to make sure I understand it. As you  
11       sit here today, you don't know which fees -- let  
12       me back up -- which providers are included in that  
13       professional fees?

14          A.       I don't have it broken out at all, no, I  
15       don't.

16          Q.       Do you know which entities are within  
17       that -- or the professionals that are within that  
18       \$6 million?

19          A.       Yeah, I believe I generally do, sure.

20          Q.       Which professionals --

21          A.       I think the law firms, the investment  
22       banker, CRG. There are probably a whole bunch of  
23       folks in there.

24          Q.       But as you sit here today, you don't

1 know which ones exactly are within that?

2 A. I don't.

3 Q. By "the law firms," are you talking  
4 about McDermott, Will & Emery and Skadden Arps?

5 A. Skadden came afterwards, but yeah,  
6 that's...

7 Q. Those are the two law firms?

8 A. Those are the two law firms. There'd  
9 also be fees that would've been charged to them  
10 through the banks and things like that as well.

11 Q. Okay.

12 A. Banks would off load the fees, though.

13 (Deposition Exhibit No. 804 was marked.)

14 Q. Mr. Greenberg, I've handed you what's  
15 been marked as Exhibit 804, and this appears to be  
16 an article that you wrote entitled "For companies  
17 in distressed situations, a need-to-know primer"?

18 A. That's correct.

19 Q. And it's dated February 9, 2009. Do you  
20 see that?

21 A. I do.

22 Q. If you would turn to the last page of  
23 that exhibit, at the very top it says "Don't wait  
24 to act or bring in legal, financial, and

1       accounting professionals to advise you." Do you  
2       see that?

3           A.       I do.

4           Q.       I take it, then, that you -- that was  
5       your opinion then and it's your opinion now that  
6       it's inadvisable to bring in legal, financial, and  
7       accounting professionals at the outset?

8           A.       That's certainly my advice, yes.

9           Q.       So I take it you're not critical of the  
10       Special Transaction Committee or the board to  
11       retain Houlihan Lokey and McDermott, Will & Emery  
12       at the outset?

13          A.       I'm not.

14          Q.       Okay. And before we're done with this  
15       exhibit, if you would turn to the page before that  
16       second page, do you see at the very bottom you  
17       state, quote, "Bankruptcy is also an exceptionally  
18       expensive process, is a last resort, and not  
19       applicable to every distressed situation," end  
20       quote? Do you see that?

21          A.       I do.

22          Q.       Is that still your opinion, that  
23       bankruptcy is an exceptionally expensive process  
24       and is to be a last resort?

1           A.       Yes, and it's all the -- yes, completely  
2 agree.

3           Q.       Okay. So if you agree that Houlihan  
4 Lokey should have been brought in at the outset of  
5 the sales process, why is it your opinion that the  
6 professional fees associated with Houlihan Lokey  
7 were wasted?

8           A.       Specifically, it's -- it's a number  
9 that's in there for total fees. I don't think  
10 they were specifically wasted on Houlihan Lokey.  
11 It's an aggregate number. Certainly, Houlihan had  
12 a -- it made sense to have them in there.

13          Q.       Yeah.

14          A.       I don't disagree with that.

15          Q.       So whatever the Houlihan Lokey's portion  
16 of the \$6 million, you believe that should be  
17 excluded from any amount that would be included in  
18 some sort of argument that fees were wasted; is  
19 that right?

20          A.       I think so, yes.

21          Q.       Okay. What about the fees associated  
22 with McDermott, Will & Emery; since your article  
23 indicates that legal advice should be brought in  
24 at the outset, are you contending that the fees

1 associated with the McDermott, Will & Emery firm  
2 were wasted?

3 A. Did they need a law firm in this  
4 process? I agree they needed a law firm in this  
5 process.

6 Q. So you don't believe that the McDermott,  
7 Will & Emery fees were wasted by Antioch?

8 A. I can't say that I don't think they were  
9 wasted. I can't -- I can only say that they  
10 certainly need a law firm.

11 Q. Well, as you sit here today, are you  
12 rendering an opinion that the fees associated with  
13 McDermott, Will & Emery's services were wasted?

14 A. As I -- as I look at it today, the  
15 question I guess more -- more -- more begs what  
16 the -- what -- what -- what they were spent on in  
17 terms of: Was there a streamline process; was  
18 there reasonableness to everything that went  
19 through; were legal fees spent because there was a  
20 lot of going back and forth between parties, in  
21 particular Mr. Morgan and Candlewood and then  
22 parties from Houlihan and all the board meetings?

23 It would be hard for me to conclude that  
24 some of that could have been spared -- that could

1 -- it's hard for me to conclude that not some --  
2 that some of that should have been spared.

3 Q. McDermott, Will & Emery was providing  
4 legal advice to the Special Transaction  
5 Committee; is that correct?

6 A. Yes.

7 Q. And whenever Candlewood or Mr. Morgan  
8 made a proposal, the Special Transaction Committee  
9 needed to draw on professional services like  
10 Houlihan Lokey and McDermott, Will & Emery to  
11 evaluate the proposals; is that correct?

12 A. Yes, generally.

13 Q. So I take it you're not critical, are  
14 you, of McDermott, Will & Emery being involved in  
15 the process of evaluating proposals by  
16 Candlewood; is that right?

17 A. To the extent that the Special  
18 Transaction Committee and the board thought that  
19 it was worthy of doing it, of reviewing -- then to  
20 the extent that's a valid assumption, then -- then  
21 they're at the -- the law firm would be at the --  
22 at the -- serving the board, so they'd have to --  
23 they'd have to -- you know, they're really dragged  
24 along in all that.

1           Q.     You don't expect the directors to be  
2 experienced lawyers in M&A transactions; is that  
3 right?

4           A.     I don't.

5           Q.     And, in fact, it's prudent of the board  
6 to hire a firm like McDermott, Will & Emery to  
7 provide legal advice whenever they get a proposal  
8 by any entity to purchase the company, is that  
9 right, or recapitalize the company?

10          A.     Yeah, I think what I'm saying -- I'm not  
11 disagreeing with that. What I'm saying is that  
12 the screen might have been a lot different  
13 relative to what was reasonable in the -- in the  
14 other offers relative to what -- where I think the  
15 offers really should have been focused.

16          Q.     And I take it, based on your prior  
17 testimony, you have not reviewed the McDermott,  
18 Will & Emery bills to determine whether or not  
19 there's any sort of improper billing having to do  
20 with Candlewood or Mr. Morgan's proposals?

21          A.     I have no -- no -- no knowledge  
22 whatsoever of what -- of whether that occurred.

23          Q.     I think you indicated you thought the  
24 CRG bill may have been included in this \$6 million

1 of professional fees; is that right?

2 A. Yeah, but I'm not absolutely sure.

3 Q. But in any event, you're not critical of  
4 Antioch for hiring CRG, are you?

5 A. They didn't have a choice. They were...  
6 When the bank tells you you need to bring in a  
7 consultant, a CRO, you do it.

8 Q. So that would not be a waste by the  
9 company to hire CRG given the bank's request?

10 A. I agree.

11 Q. Now, some of these fees, if I understand  
12 you correctly, you think you associated with the  
13 Skadden Arps firm, right?

14 A. Yeah. Skadden came in, I guess, in June  
15 when the board was reconstituted or late May,  
16 something like that, so...

17 Q. If I refer to the old board as being the  
18 board before the board termination in June 2008,  
19 is that -- do you understand what I'm saying  
20 there?

21 A. I do.

22 Q. Is it your understanding that the old  
23 board played no role in retaining Skadden Arps?

24 A. Yes, it is my understanding.



1           Q.       So you're not claiming that the old  
2 board committed waste in association with anything  
3 having to do with the Skadden Arps bills; is that  
4 right?

5           A.       I would -- I would agree with that, yes.

6           Q.       Let's talk about Mr. Morgan retaining  
7 Candlewood. I want to make sure I understood what  
8 you testified to this morning and what you state  
9 in your report.

10                   One of the two options that the company  
11 had by the end of 2006 was to either sell the  
12 company or to have a management buyout; is that  
13 right?

14           A.       Those were the -- the -- the most  
15 obvious options, yes.

16           Q.       Okay. And as far as the management  
17 buyout is concerned, it would be natural to think  
18 that Lee Morgan would be part of the team of  
19 management personnel that would be interested in a  
20 buyout; is that right?

21           A.       Yeah, contextually that seems correct to  
22 me, yes.

23           Q.       Okay. And you also understood that  
24 Mr. Morgan had a lot invested in Antioch?

1           A.       I understood that he had notes.

2           Q.       And do you know how much those notes  
3 were valued at at face value?

4           A.       I think par value -- doing this off the  
5 top of my head. I'm trying to think of what was  
6 in there. It was 50 million, in that range. I --  
7 I -- but it was a lot of money.

8           Q.       But most of it would have been  
9 associated to his sub debt?

10          A.       That's what I assumed, yeah.

11          Q.       And he was a warrant holder as well?

12          A.       Yes.

13          Q.       Do you know how many warrants he held?

14          A.       Not -- not offhand. I looked at it, but  
15 I don't know off the top of my head.

16          Q.       A substantial amount?

17          A.       A substantial amount of warrants, yes.

18          Q.       Okay. And he was also an ESOP  
19 participant?

20          A.       Yes, he was.

21          Q.       Do you know how much his ESOP amount  
22 was --

23          A.       I know his --

24          Q.       -- his account?

1           A.     I know when they had to -- they had to  
2 pull -- put together the sub trust, so I'm  
3 assuming it was around 15 percent or -- or  
4 consolidated Morgan around 15 percent when they  
5 had to set up the sub trust. So I'm not --  
6 it's -- it's a rough estimate based on what the  
7 action was, so...

8           Q.     Okay. And through his company called  
9 Levimo, he and his wife had invested \$26 million  
10 into buying the Antioch real estate in St. Cloud,  
11 right?

12          A.     I don't believe they invested \$26  
13 million. They invested \$5 million capital and  
14 borrowed the balance in pledged assets.

15          Q.     I mean, if you take out a loan, you've  
16 committed yourself to pay the 21 million, right?

17          A.     Yeah, I'm -- yeah. I'm just breaking it  
18 down into constituent parts.

19          Q.     I gotcha. So I take it, since you're in  
20 the business of advising both companies and  
21 owners/shareholders of companies, that you don't  
22 have a problem with Mr. Morgan retaining an  
23 investment advisor given what was going on here  
24 and his substantial investment in Antioch, right?

1           A.     No, I don't.

2           Q.     Okay. And as part of a management  
3 buyout, he would need an investment advisor as  
4 well, right?

5           A.     Yeah, sure.

6           Q.     And if the company was going to be  
7 considering a recapitalization, since he had a lot  
8 of capital in various stages, he would need an  
9 investment advisor for that process, too, if that  
10 was going to be one of the things they were going  
11 to look at?

12          A.     Yeah, probably the same investment  
13 advisor, yes.

14          Q.     Right. And given all that, isn't it  
15 fair to say that the old board had no right or  
16 ability to prevent Mr. Morgan from retaining  
17 Candlewood to give him advice?

18          A.     I agree with that.

19          Q.     Would you also agree that Mr. Morgan had  
20 a right to make an offer to buy or recapitalize  
21 Antioch?

22          A.     It's America. He can.

23          Q.     Okay. And that happens --

24               MR. SCHEIER: So is the answer yes?

1                   THE WITNESS: I said he can, yes, so the  
2 answer's definitely yes.

3           Q.       (By Mr. Knoth) And that happens a lot,  
4 doesn't it, where a management person who has a  
5 substantial stake in the company does make an  
6 offer to buy the company or to recapitalized the  
7 company, right?

8           A.       It definitely happens, yes.

9           Q.       And you've been involved in that kind of  
10 transaction?

11          A.       Yes, I have.

12          Q.       In fact, I think you mentioned  
13 BridgeStreet's deal recently. That was a  
14 situation in which the stakeholders restructured  
15 their stakes in the company; isn't that right?

16          A.       Yeah. There was a hedge fund and -- and  
17 a large money center bank through their bond group  
18 had substantial loans to the company, and there  
19 was -- yeah. Everything got restructured.

20          Q.       And that restructuring took over a year,  
21 right?

22          A.       That restructuring closed in January of  
23 2011. I started on it eight, nine months prior to  
24 that, that specifically. I was engaged by the

1 client before that, but the restructuring was...

2 Q. Who was your client in that one?

3 A. BridgeStreet Worldwide, the company.

4 Q. The company?

5 A. Mm-hmm.

6 (Deposition No. 805 was marked.)

7 Q. Mr. Greenberg, I've handed you what's  
8 been marked as Exhibit 805.

9 A. Yeah.

10 Q. And this appears to be an article that  
11 was in the Cincinnati Business Courier, and you're  
12 quoted in the article having to do with the  
13 BridgeStreet restructuring. Do you see that?

14 A. I do.

15 Q. Okay. And the second paragraph here  
16 says that -- that you at least reported that you  
17 spent about a year as the main advisor on that  
18 deal; is that right?

19 A. Yeah, it says that. It's -- it's the --  
20 I've been an advisor to the company more than a  
21 year, but the -- the actual in earnest  
22 restructuring process -- well, maybe it was about  
23 a year. It started -- pretty much started in  
24 January of that year, so yeah, that's about right.

1 Q. Okay.

2 A. That's correct.

3 Q. And it looks like about midway through  
4 that it talks about the company having \$200  
5 million in annual revenue. Do you see that?

6 A. Yes.

7 Q. And various levels of debt?

8 A. Yes.

9 Q. And so the restructuring was quite  
10 complex. Do you see that?

11 A. Yes.

12 Q. Now, the \$200 million in annual revenue,  
13 that's a smaller company than The Antioch Company  
14 was in 2007 and 2008, right?

15 A. That's correct.

16 Q. And you quoted it at the very end of the  
17 article that that's the biggest restructuring  
18 you've ever done. Do you see that?

19 A. Yeah, in terms of capital, not  
20 necessarily the size of the company.

21 Q. And you say it was completely  
22 exhausting; is that right?

23 A. It was.

24 Q. So a one-year exhausting effort, right?

1           A.       It was non-stop.

2           Q.       Okay.  It's a big undertaking to  
3       restructure a company with significant levels of  
4       debt; is that right?

5           A.       And very different parties, yes.  It's  
6       -- it's daunting.

7           Q.       You've indicated you've advised boards  
8       of directors in the past; is that right?

9           A.       Yes.

10          Q.       Is it your understanding that a board  
11       has a fiduciary duty to consider all proposals  
12       that are made to the company to buy the company?

13          A.       Yeah, it's my understanding, yeah.

14          Q.       And will you agree with me that the  
15       Special Transaction Committee had a fiduciary duty  
16       to consider all proposals that might be made that  
17       would possibly be useful to resolve or improve  
18       Antioch's financial condition?

19          A.       I would agree with that.

20          Q.       And would you agree with me that the  
21       Special Transaction Committee could be found to  
22       have breached its fiduciary duty if it refused to  
23       even consider proposals made by Mr. Morgan or  
24       Candlewood?



1 MS. ANDREW: Objection.

2 A. Yeah. I mean, let's -- the -- that's  
3 qualitatively what "consider" means. If -- if  
4 they looked at it and said that's not going to  
5 work, and we were done with it, I would generally  
6 agree. But there's a qualitative/quantitative  
7 aspect to what we're talking about in terms of  
8 considering, so...

9 Q. So they should at least consider it?

10 A. I think they have a general obligation  
11 to.

12 Q. And in considering it, they should  
13 look -- they should look to their financial  
14 advisors like Houlihan Lokey and their law firm  
15 like McDermott, Will & Emery to weigh in on the  
16 proposal; is that right?

17 A. Yeah, to the extent that there's a  
18 reasonableness to it, and, again, that's what's  
19 worth really considering.

20 Q. But you don't expect the board members  
21 themselves to determine if it's a reasonable offer  
22 or not without running it past their financial  
23 advisor or the law firm, do you?

24 A. Well, I'd expect some knowledge of what

1       would be reasonable, yes, I do, actually.

2           Q.       But you don't fault them for wanting to  
3       get that analysis from the financial advisor or  
4       law firm before responding to an offer?

5           A.       I don't know. I mean, I've worked with  
6       boards where offers came in that were rejected out  
7       of hand at the board level, and nobody else was  
8       brought in to review them because they weren't  
9       going to -- on the face of them weren't going to  
10      work or the quality of the potential buyer was in  
11      question or -- I mean, there's a lot of reasons  
12      that you may not go any further than simply  
13      looking at it.

14          Q.       But in this case, you're not critical of  
15      the Antioch Board or Special Transaction Committee  
16      to consult with their investment advisor and their  
17      law firm, are you?

18          A.       I'm not critical in -- yeah, in the  
19      sense that that's something that they would do,  
20      no.

21          Q.       I think you indicated in your report and  
22      maybe even in your deposition that you were  
23      involved in sell efforts to sell The Antioch  
24      Publishing Company; is that right?

1           A.     Yes, I was.

2           Q.     And that took almost a year; isn't that  
3 the case?

4           A.     It may have been that long. I don't  
5 recall exactly, but that sounds -- it certainly  
6 could be.

7           Q.     Now, looking through documents, we can  
8 -- I can show them to you if you want, but I  
9 looked at a document that indicated that the  
10 target date for closing the transaction for  
11 Antioch Publishing was August 15, 2007. Do you  
12 recall that?

13          A.     I don't.

14          Q.     Do you dispute that?

15          A.     I don't dispute it. I just don't -- I  
16 just don't recall.

17          Q.     Do you recall when, in fact, it closed?

18          A.     I'm thinking it didn't close until early  
19 '08, but I could be wrong.

20          Q.     If I represent to you that the asset  
21 purchase agreement was dated February 15, 2008,  
22 does that sound right?

23          A.     That sounds right to me.

24          Q.     And it closed sometime after that?

1           A.       That sounds right to me.

2           Q.       In your opinion, was Antioch Publishing  
3 a distressed company?

4           A.       Yeah, in my opinion it was kind of a  
5 mess. It had -- it was reporting income  
6 internally as a division. It wasn't a -- you  
7 know, really a -- but if you -- one of the remarks  
8 I think I initially made when I met with the  
9 company with my partner Madeline Ludlow was we  
10 just looked at -- immediately went to the balance  
11 sheet and saw that its -- its inventory turn as a  
12 -- in relationship to its Cost of Goods Sold was  
13 just abysmal.

14                   I mean, they were buying a lot of  
15 inventory at -- at high volume to -- to get margin  
16 levels, not necessarily surreptitious -- or trying  
17 to hide anything, but -- to get it at margin  
18 levels that would produce profits. But if you do  
19 cash-on-cash basis, the company really was not  
20 positive cash flow from an internal point of view.

21           Q.       Was it -- I'm sorry?

22           A.       That was my point of view. I mean, I  
23 didn't think it was a strong or well run business.  
24 And they were off shoring a lot of their

1 production, and -- and it went through large  
2 production runs that created very low return on  
3 their inventory, so...

4 Q. Was it making a profit?

5 A. It was making a profit, but if you wrote  
6 off the inventory and you adjusted for inventory  
7 excess and inventory, you -- it certainly wouldn't  
8 be making a profit, if I recall.

9 Q. Just turning to the Levimo transaction  
10 just briefly -- because you've talked about that a  
11 lot -- I want to make sure I understand. You're  
12 not critical of using a sale-leaseback transaction  
13 to raise cash?

14 A. It happens all the time.

15 Q. Okay. And you're not giving the opinion  
16 that Levimo paid too little for the properties,  
17 are you?

18 A. I have no -- no -- no context in which  
19 to judge that.

20 Q. Okay. And you're not contending that  
21 Antioch was paying too much rent --

22 A. Again, I have no context to judge that.

23 Q. If you would, turn to your report at  
24 page 12. At the very bottom of that page, page

1 12, you talk about the emergent weakness of its  
2 business model. Do you see that?

3 A. Um...

4 Q. The very last line.

5 A. (Reading) "Notwithstanding, a steady  
6 decline in revenue and earnings also resulted in  
7 reductions..." I'm sorry. I'm not seeing where  
8 you are.

9 Q. On the very last line, you talk about --  
10 you have the phrase "the emergent weaknesses in  
11 its business model."

12 A. Yeah, I do see that.

13 Q. And I think you testified earlier today  
14 about the business model proving to be an  
15 inseparable barrier to generating sustainable  
16 interest among strategic buyers; do you remember?

17 A. Yeah, the "insuperable" barrier is what  
18 I said, yeah.

19 Q. What do you mean by emergent weakness in  
20 its business model?

21 A. Well, a couple things. The business  
22 model was a direct sales model -- a party plan  
23 direct sales model. It was primarily paper  
24 product. That was where the lion's share of all

1 the revenue was. The -- the -- their competition  
2 was increasingly moving to online and digital  
3 technologies.

4 And that's generally what I meant. It  
5 was just -- that it was a business model that was  
6 becoming -- getting lapped by some of the other --  
7 other technology offerings that were out there.

8 Q. But was it your understanding that the  
9 other businesses in sort of the paper scrapbooking  
10 business were having similar problems?

11 A. I've read some -- some -- some items  
12 about that in one of the -- there was one of the  
13 P funds that had a position in a -- in a -- in a  
14 scrapbooking business, and there was softness  
15 there, so -- so I generally got that that's  
16 probably the case.

17 Q. Was it your understanding that  
18 Mr. Morgan was opposed to going through bankruptcy  
19 because he thought it might affect the future  
20 sales of the company?

21 A. I recall specifically that his view was  
22 having -- there was another company that I believe  
23 he was referring to that went through a party plan  
24 type of company -- network-type company that

1 bankruptcy was highly detrimental to, and -- but  
2 I'm not sure I'm answering your question.

3 Q. No, you are. You are.

4 A. Okay.

5 Q. You understood that was his position, at  
6 least?

7 A. Yeah, I understood he was very concerned  
8 about going into bankruptcy.

9 Q. As you sit here today, are you aware of  
10 any direct marketing company or party planning  
11 company that has ever survived the filing of a  
12 bankruptcy petition?

13 A. Not that I know. I just don't have that  
14 knowledge at this point.

15 Q. And as far as the mechanism that we're  
16 talking about there about why bankruptcy might be  
17 a bad idea, the concern was by, I think,  
18 Mr. Morgan and Mr. Lenoir was that the sales  
19 consultants would leave Antioch once it found out  
20 about financial distress in the company and go  
21 sell for some other business; isn't that right?

22 A. I think I recall reading something like  
23 that. It certainly -- it sounds -- it sounds  
24 correct to me.



1           Q.     Now, I don't know if you recall this  
2 exactly, but the 2007 sales for Antioch was about  
3 \$242 million; is that right?

4           A.     What year?

5           Q.     2007, the last full year.

6           A.     I'll take that as -- to be the case.  
7 I've got it written down here, but...

8           Q.     That seems to be about --

9           A.     Sounds right to me, yes.

10          Q.     Are you familiar with the fact that  
11 Antioch filed bankruptcy again in 2013?

12          A.     Yes, I am.

13          Q.     Have you reviewed any of the bankruptcy  
14 filings from that case?

15          A.     The only thing I saw -- I looked at --  
16 when I was first contacted by Taft, I went online  
17 to see what the petition looked like. That's it.  
18 That's it.

19          Q.     And did you notice when you looked at  
20 whatever you looked at that Antioch was reporting  
21 that its 2012 sales was about \$94 million?

22          A.     I don't recall exactly. I know it was a  
23 lot smaller than when it started.

24          Q.     That decline would be consistent with,

1 at least, the argument that the filing of the  
2 bankruptcy petition impacted the company  
3 negatively; is that right?

4 A. I'm not sure I would see it that way.  
5 What I would see is that when you go through a  
6 reorganization under Chapter 11 and it's a  
7 protracted time to get that done, I would agree  
8 that that might have a fair amount of impact.

9 It also looked to me, because the  
10 company went in on a prepackaged deal and the  
11 lenders got their money out in a variety of ways,  
12 that the company was significantly  
13 undercapitalized at the same time through that  
14 period. And, in fact, I believe that was one of  
15 the comments that was made in the petition.

16 Whereas in a 363 -- Section 363 sale,  
17 those things can happen pretty quickly. I've done  
18 them in -- you know, we filed in June and closed a  
19 -- closed the -- closed the auction by mid  
20 August. So you can get through them pretty  
21 quickly if...

22 Q. Do you know what happened as far as the  
23 number of consultants for Antioch --

24 A. I don't.

1           Q.     I'll represent to you that the  
2 bankruptcy filings indicated that in 2008, they  
3 had 55,000 consultants; and by 2013, they had  
4 21,000 consultants.

5           A.     Yeah, that...

6           Q.     Does that seem about right to you from  
7 what you understand?

8           A.     Yeah. That would certainly seem  
9 consistent with everything else.

10          Q.     Look at page 7 of your report.

11          A.     Yes, sir.

12          Q.     In the third paragraph, second sentence,  
13 you say "Members of the ESOP advisory board were  
14 appointed by the board of directors and can only  
15 be removed by the unanimous consent of the board  
16 of directors." Do you see that?

17          A.     I do.

18          Q.     What's your source of information for  
19 that proposition?

20          A.     I think from one of the filings,  
21 something -- I think that's mostly where that came  
22 from, from the -- from the complaint, I think,  
23 from Taft law firm.

24          Q.     Okay.

1           A.     It was in the -- in fact, I think that's  
2 exactly where I got it from.

3           Q.     From the complaint?

4           A.     Yeah.

5           Q.     Okay.

6           A.     Yeah.

7           Q.     I take it you didn't look at the tender  
8 offer to see if that was the case?

9           A.     I didn't have the tender offer.

10          Q.     And you didn't look at any other  
11 corporate document to determine if that was  
12 actually the case?

13          A.     I took it at face value.

14          Q.     Okay. If you'd look further down that  
15 page right above your chart, you say that -- that  
16 as part of the 2003 transaction, the other  
17 directors of the board, meaning the non-Morgan  
18 directors, collectively received about \$25  
19 million. Do you see that?

20          A.     I do.

21          Q.     What's the source of your information?

22          A.     Again, probably from the -- from the  
23 complaint as well.

24          Q.     Do you know whether or not -- based upon

1 your review, whether or not that's accurate or  
2 not?

3 A. Again, I took it for what it said.

4 Q. Did that number have any impact on your  
5 analysis that -- your assumption that the other  
6 board directors received \$25 million as part of  
7 that transaction?

8 A. I'm not sure what your question is.

9 Q. Well, I mean, you put this in your  
10 report as a fact that, I guess, I thought maybe  
11 you were basing your opinions on. Are any of your  
12 opinions based upon the fact that you're claiming  
13 in your report that the other directors of the  
14 board collectively received about \$25 million?

15 A. No. I think from an opinion point of  
16 view, whether they had 5 million or 25, it didn't  
17 -- it was the -- the general thrust of it was how  
18 much actually had come out at the closing of the  
19 tender offer.

20 Q. Do you know whether or not the  
21 non-Morgan defendants took at least part of their  
22 consideration in the form of the package?

23 A. Yes, they -- yeah.

24 Q. Would you agree with me that an investor

1 taking a package must believe that the company's  
2 going to prosper in the future in order to make  
3 that a good deal?

4 A. As opposed to taking all cash?

5 Q. Right.

6 A. I would assume that's what they were  
7 thinking, yes.

8 Q. Let me have you turn to the next page,  
9 page 9. You went over your chart there yesterday,  
10 and I want to make sure I understood what you're  
11 doing there. Let me see if I can summarize this,  
12 and tell me if I'm right about this.

13 It looks like on the left side of the  
14 chart, you're looking at what the equity value  
15 calculation was as of 2012 as determined by BVI,  
16 right?

17 A. 2002.

18 Q. 2002. I'm sorry.

19 A. Yeah, that came out of BVI's evaluation.

20 Q. And on the right side, you're trying to  
21 determine what the estimated enterprise value was  
22 of the company based upon the \$850 per share after  
23 the transaction, correct?

24 A. Yeah. I'm trying to estimate what it

1 would have looked like post-transaction based on  
2 that enterprise, exactly.

3 Q. And I take it you knew or could multiply  
4 out the equity value, right, as part of your --

5 A. If I know the number of shares and I  
6 know the price of the shares, I can do that.

7 Q. And then the funded debt you knew  
8 because it was a number from the financials that  
9 you picked up for that, right?

10 A. Yes.

11 Q. And so really what you were trying to  
12 solve for was the estimated enterprise value; is  
13 that right?

14 A. Yeah. I was backing into it.

15 Q. Okay. Would it be fair to say that if  
16 you're doing the equity value at 850 per share,  
17 since you were looking at it from a  
18 post-transaction situation, you would have to use  
19 the post-transaction number of shares that were  
20 outstanding, right?

21 A. Yes.

22 Q. Okay. If you look at this number, isn't  
23 it the case that you actually used the number of  
24 shares that were pre-transaction?

1           A.     I believe that I calculated on a post-  
2 transaction basis.

3           Q.     Here's a calculator. Do you want to --

4           A.     Oh, don't ask me -- please don't ask me  
5 to do that. I can't go through... I mean, I need  
6 to look at a spreadsheet to do...

7           Q.     Well, I mean, it's an easy -- if you  
8 take \$408,304 and divide it by 850, you get the  
9 number of shares, right?

10          A.     Mm-hmm.

11                 MR. SCHEIER: Was that a yes?

12          Q.     Was that a yes?

13          A.     If you take the...

14          Q.     408,000 --

15          A.     ...thousand and divide it by the 850,  
16 yes, that would be correct.

17          Q.     So do you want to divide it out and see  
18 what number you come up with?

19          A.     Yeah, sure. (Using calculator.) I come  
20 up with 4 million 80471 (as said).

21          Q.     Try it again.

22          A.     I'm sorry.

23          Q.     408,000 --

24          A.     I'm not used to your calculator. (Using



1 calculator.) 8, zero, zero, zero, divided by  
2 850... It's 480,357.

3 Q. Okay. And isn't that the number of  
4 shares that were in existence pre-transaction?  
5 And if you need to look at the next page, you have  
6 the post-transaction number of shares in the chart  
7 on page 10.

8 A. Yeah, I think -- I'm trying to  
9 understand what I -- what I was doing for a  
10 minute.

11 Q. Just so it's clear, the post-transaction  
12 number of shares --

13 A. There were fewer shares.

14 Q. -- is 205,593.

15 A. Mm-hmm.

16 Q. Is that right? Yes?

17 A. Yeah, ESOP shares were 205,593. There  
18 was another 155,000 in warrants.

19 Q. But as far as the number of shares  
20 outstanding that you would have to multiply by  
21 850, you should have used the 205,593 shares as  
22 opposed to the 480,000 shares that you used,  
23 correct?

24 A. Um... (Using calculator.) Say that

1 again. I'm sorry.

2 Q. Okay. If you're trying to determine the  
3 equity -- or the estimated enterprise value post-  
4 transaction, you should have multiplied \$850 per  
5 share by the number of shares that were  
6 outstanding post-transaction, not by the number of  
7 shares that were outstanding pre-transaction as  
8 you did in your chart?

9 A. Yeah, I'd agree with that.

10 Q. Okay. We can do the math, but, you  
11 know, I've done the math, and I calculated that if  
12 you'd done it correctly, the estimated enterprise  
13 value would be about \$354 million. Does that  
14 sound about right?

15 A. Yeah.

16 Q. Okay. And that 354 million is not that  
17 far off from the 314 million that was determined  
18 by BVI in 2002, right?

19 A. Yeah, that's BVI's number. I think what  
20 I was doing here, just to -- I say (reading) By  
21 comparison, if one assumes that the senior and  
22 subordinated debt funding was accounted for in the  
23 850 share -- yeah, I don't disagree with you.

24 Q. Okay.

1           A.     I think that's misleading.

2           Q.     So your report makes an error in  
3     comparing the 2002 enterprise value of \$314  
4     million to an enterprise value for 2003 post-  
5     transaction of \$588 million, right?

6           A.     I think so.

7           Q.     Okay. So then turning to page 10, let's  
8     talk about the chart that's in the middle of that  
9     page. Now, if I understand what you did here  
10    correctly, you took the post-transaction adjusted  
11    equity value of \$248 million, right?

12          A.     (No response.)

13          Q.     Let me back up. The equity valuation  
14    you used in that example was what number? Was  
15    that the 408 million that you used from before?

16          A.     That was the initial value of the  
17    equity, right.

18          Q.     So here, you're trying to determine  
19    what?

20          A.     I need to read -- give me a moment,  
21    please.

22          Q.     Yeah.

23          A.     (Examining document.) I'm just -- I'm  
24    trying to do two things, and I may have not done

1     it completely correctly. But what I'm trying to  
2     do is I'm trying to establish what the enterprise  
3     value was based on the 850 a share because I  
4     didn't have the valuation --

5           Q.     Right.

6           A.     -- I mean as a starting point. The  
7     second thing I was looking at -- well, okay, let's  
8     look at it on a post-transaction basis what had  
9     happened on the new number of shares and what that  
10    post-transaction adjusted share price would look  
11    like and netting out the debt and adjustments for  
12    post-transaction debt.

13          Q.     So what you're trying -- if I'm  
14    understanding, you're trying to determine what the  
15    share price should be post-transaction based upon  
16    the number of shares outstanding after the  
17    transaction, right?

18          A.     Yes.

19          Q.     Okay. And so when you did your  
20    calculation, you divided the post-transaction  
21    adjusted equity value by both -- by the sum of the  
22    ESOP shares and the warrants?

23          A.     Yeah, total outstanding.

24          Q.     Let me understand how the warrants

1 worked. In order to be able to exercise a  
2 warrant, you had to pay the strike price of  
3 \$850; is that right?

4 A. Yes.

5 Q. Where in your calculation do you adjust  
6 the numbers to reflect the \$850 a share that a  
7 warrant holder has to pay into the company in  
8 order to convert the warrant into a share?

9 A. I don't. I have not made it -- I've not  
10 accounted for the -- the -- the exercise value of  
11 the warrants in this.

12 Q. And isn't it appropriate that you should  
13 do that so that you can determine exactly what the  
14 share value would be? Don't you have to add in  
15 the 850 per share?

16 A. Yeah. It would be -- it would be a  
17 proceed value that would -- a cash value that  
18 would accrue to the benefit of the -- of the  
19 company's balance sheet and so forth.

20 Q. And you haven't done that, right?

21 A. I haven't done it. Just so we don't get  
22 overly elaborate, what I'm just trying to do is  
23 look at what would be an estimated enterprise  
24 value, what was the fully diluted outstanding, and

1 really just trying to look at what the assumptions  
2 may have been at the time without having the  
3 valuations themselves.

4 Q. I know, but what you're trying to do  
5 here -- I mean, at least the conclusion you've  
6 reached here is that the 689 adjusted share price  
7 that you've calculated -- you're comparing that to  
8 the 850 share price and concluding that there's  
9 something wrong here.

10 And what I'm suggesting here is that you  
11 needed to put the \$850 per share per warrant into  
12 the calculation before you did your division; is  
13 that right?

14 A. I'm not arguing with you.

15 Q. You agree with me?

16 A. I agree with you.

17 Q. Okay. Now, I did the math on that, and  
18 if you did that, the share -- adjusted share price  
19 would be 1,054. Does that sound right to you?

20 A. I'd have to do the -- look at the  
21 numbers, but I'll take your -- your -- your word  
22 for it.

23 Q. Assuming that's correct, would that  
24 cause you to conclude that the deal was actually a

1 good deal on a post-transaction basis?

2 A. (No response.)

3 Q. At least on a per share adjusted share  
4 price post-transaction basis?

5 A. If all the warrants were fully exercised  
6 in the period in which they would have exercised  
7 down the road at the time that they were allowed  
8 to be exercised -- if it all happened way down  
9 then, I would conclude that you're correct.

10 Q. Okay.

11 A. But that's -- I wasn't addressing when  
12 they were fully exercised.

13 Q. Okay. Well, if you exclude the  
14 warrants, because you don't know if they're going  
15 to be exercised or not, and just divide by the  
16 number of ESOP shares outstanding after the  
17 transaction, I did that math and I got a number of  
18 \$1,209. Does that sound about right to you?

19 A. Sounds about right.

20 Q. Does that indicate to you, at least  
21 based upon this analysis -- you know, there may be  
22 other ways to analyze this, but at least based on  
23 this analysis, that would indicate that, at least  
24 on a financial post-transaction adjusted share

1 price, that the 2003 transaction resulted in a  
2 higher share price post-transaction than the 850?

3 A. Based on all that math, I'm not -- I  
4 wouldn't contend otherwise, if that's really what  
5 was going on.

6 Q. Right. If you --

7 A. I mean, it was at 890 -- I mean, the  
8 valuation by the valuator at the time was 894, I  
9 think the number was I got corrected on yesterday.  
10 You know, I think there's certainly a range of  
11 dispute as to exactly what that share price would  
12 be, but given the fact that the valuator did it a  
13 -- for the ESOP on a -- on a fair market basis,  
14 so...

15 Q. And that was on a post-transaction  
16 valuation?

17 A. Yes. It was above the 850, so yes.

18 Q. Turn to page 11 of your report. Let's  
19 skip on. I can't find what I was looking for, so  
20 I'll skip that for now. Let's go off the record.

21 (A brief break was taken.)

22 Q. (By Mr. Knoth) Turning to page 11 of  
23 your report, under the heading Roman numeral 9, do  
24 you see that there?



1           A.       I do.

2           Q.       You say "There were issues that  
3 purportedly prevented the ESOP from participating  
4 in the tender offer including the absence of a  
5 formal valuation." Do you see that?

6           A.       Mm-hmm.

7           Q.       What are you talking about there?

8           A.       This is... I'm trying to recall where I  
9 got that from, but it was one of the reasons that  
10 I was given. And whether I read it or it was a  
11 part of a discussion, I don't recall  
12 specifically -- that one of the reasons they --  
13 GreatBanc decided not to do it was because they  
14 had not yet done their formal valuation, but it  
15 was -- I don't know exactly where I got that from.

16          Q.       What do you mean GreatBanc decided not  
17 to do it? What are you --

18          A.       Not to participate in -- they hadn't  
19 done a valuation. They wanted to do an  
20 independent valuation, and that was just one of  
21 the reasons that I was given. I'm not sure how  
22 material the reason is, but...

23          Q.       Do you know who gave you that reason?

24          A.       I think it came either -- either I read

1 it, or it was given in conversation to me by the  
2 Taft attorneys.

3 Q. But you don't remember as you sit here?

4 A. I really don't. It was a while back.

5 MR. KNOTH: That's all I have. Thank  
6 you very much.

7 (Off-the-record discussion, and a break  
8 was taken for lunch.)

9 CROSS-EXAMINATION

10 BY MR. GENTRY:

11 Q. Good afternoon, Mr. Greenberg.

12 A. Good afternoon.

13 Q. My name is Dan Gentry. And I along with  
14 Terry Fague at Coolidge Wall represent Alan Luce  
15 and Nancy Blair in this matter along with Guy  
16 Walker who has been dismissed.

17 This is the time in the deposition when  
18 the shuffling of chairs picks up speed because  
19 there's diminishing returns to lawyers asking you  
20 questions, and we're all trying not to be  
21 repetitive, and I'll follow that too. So bear  
22 with me as I make those adjustments.

23 A. Mm-hmm.

24 Q. The first thing I want to do is hand you

1 Deposition Exhibit -- actually, before I do that,  
2 are you -- have you had a chance to review  
3 documents in connection with your testimony  
4 yesterday and today?

5 A. Did I -- are you asking did I look back  
6 at the documents that I had?

7 Q. Yes.

8 A. Yes, I have. I looked this morning.

9 Q. And what documents did you look at?

10 A. There were a variety of documents.  
11 There were summaries -- list of summaries from  
12 Houlihan, some interchange of memos with Evolve,  
13 things like that, some...

14 Q. To your knowledge, were all those  
15 documents included with the production that the  
16 defense attorneys received in the case?

17 A. Yes, they are.

18 Q. And I'll tell you how we know that is  
19 they say "Greenberg" at the bottom and have a  
20 little number next to them. Does that ring a  
21 bell?

22 A. Well, I'm not sure we're saying the same  
23 thing. The documents that I looked at this  
24 morning were the documents that were in my file

1 from -- that I received from Taft law firm, and  
2 that's what I've looked at so far. So anything  
3 I've looked at has been disclosed. I just  
4 reviewed some things this morning.

5 (Deposition Exhibit 806 was marked.)

6 Q. I'm going to hand you Deposition Exhibit  
7 806, and this is a document that has been produced  
8 through --

9 A. Yeah.

10 Q. -- subpoena responses. And if you would  
11 take a look at that and identify that for me,  
12 Mr. Greenberg, that would be great.

13 A. Yeah. It's an article I wrote sometime  
14 back. I'm not exactly sure what the date -- it  
15 says September 2009, but it -- I'm not sure that's  
16 precisely correct, but I wrote it.

17 Q. So you're the author, and this document  
18 says "Silverstone Advisors" "Silverstone Briefing"  
19 at the top of it?

20 A. Mm-hmm.

21 Q. And it's got a Bates number Greenberg  
22 00051 through 53. Do you see that at the bottom?

23 A. I do. I see 5100...

24 MS. ANDREW: No, the other page.

1 A. Oh, I'm sorry.

2 Q. It's three pages.

3 A. I'm sorry. Yeah, I do. I see it.

4 Q. And you say you authored the document,  
5 and the title is "How a Market Allocates Value,  
6 Getting Calibrated in the Middle Market." Do you  
7 see that?

8 A. I do.

9 Q. What was your purpose in writing this  
10 briefing?

11 A. Well, I think that -- I'm assuming from  
12 -- I'm speculating what I was thinking, but I  
13 think at the time I was writing it, it was simply  
14 to -- to kind of create a way of thinking about  
15 how businesses get valued, particularly middle  
16 market businesses, and what some of the factors  
17 are and what one would generally expect in broad  
18 strokes as well as in more detailed level. That's  
19 what I was trying to do.

20 Q. And this document's intended to be  
21 distributed, I supposed, to potential clients?

22 A. Well, clients and potential clients,  
23 yes.

24 Q. And the document reflects your personal

1 views?

2 A. Certainly, yes.

3 Q. Have your views changed, to your  
4 knowledge, since you wrote the article?

5 A. It's been a while since I read it, so I  
6 can't tell you exactly, but probably generally  
7 not, but specifically maybe. I'd have to -- I'd  
8 have to see.

9 Q. And the article begins with a reference  
10 to "an unusually long business cycle." Do you see  
11 that?

12 A. I do.

13 Q. It says "16 years' worth and some  
14 counting"?

15 A. Yes.

16 Q. All right. And this piece was written  
17 in September of 2009. So when you're addressing  
18 this market or business cycle, are you intending  
19 to address generally 16 years before the time that  
20 you wrote the article?

21 A. I don't know how I came up with the  
22 16-year estimate, but yes, it's all periods prior  
23 to that for at least 16 years, right.

24 Q. And then that, of course, includes the

1 period of time that The Antioch Company -- the  
2 events that we're discussing here in the last  
3 couple of days occurred between 2003 and 2008,  
4 true?

5 A. Clearly, yes.

6 Q. And in that first paragraph, the  
7 language says "Business owners could look out over  
8 the next five years or so, and barring any  
9 unforeseen calamities" -- do you see that?

10 A. I do.

11 Q. Can you read the rest of that paragraph  
12 to yourself?

13 A. Yes. (Examining document.)

14 Q. And what that paragraph is saying is  
15 that during the 16-year business period, business  
16 owners could look out over a five-year period and  
17 feel reasonably assured that they could predict  
18 what might happen with their business?

19 A. It does say that. It also says (as  
20 read) Clearly a degree of optimism was required.  
21 Things would need to go reasonably well. The  
22 stars would need to be aligned.

23 So it's just not -- there's  
24 qualifications to... (inaudible)

1 THE REPORTER: Qualifications to what?

2 THE WITNESS: To what the statement that  
3 the -- that I was -- that was made by the lawyer.

4 Q. (By Mr. Gentry) And then the article  
5 says that these things changed with the financial  
6 crisis that you referred to in November of 2008.

7 A. Yes.

8 Q. So that's when things changed?

9 A. Dramatically changed, yes.

10 Q. And if you look over to the second  
11 column, the first full paragraph begins with the  
12 words "An important lesson." Do you see that?

13 A. Yes, I do.

14 Q. And the language says "We learned that  
15 credit markets are an essential value driver, and  
16 that exuberant credit markets spurred on by  
17 aggressive equity investors can and will create  
18 valuation bubbles." Do you see that?

19 A. I do.

20 Q. Are you saying that the availability of  
21 credit affects valuation for a company?

22 A. I'm saying absolutely that's true.

23 Q. And that was true during the 16-year  
24 period?



1           A.       It's true now.

2           Q.       And it was true during 2007 to 2008?

3           A.       It is true.

4           Q.       And how influential or how much of an  
5 impact would you say that credit markets are on  
6 valuation, if you can?

7           A.       May I provide some context so you  
8 understand what I -- where I get... The way  
9 private equity investors typically generate  
10 returns is certainly through the growth of the  
11 business that they acquire so that the value's  
12 greater at some point.

13                   They also -- they also generate  
14 returns -- internal rates of return on equity  
15 investments by de-leveraging the -- the entity  
16 that they've -- they've acquired. So -- or it's  
17 not necessarily de-leveraging by -- by using the  
18 leverage and getting the value of the leverage,  
19 how to leverage the equity.

20                   So clearly, credit markets and credit is  
21 a very important part of how certainly private  
22 equity funds think about their returns. So today,  
23 where the markets are roughly 50/50 dead equity,  
24 IRRs which may have been anticipated in the high

1 20s to 30 percent ranges are in the low 20s, even  
2 high teens, because the credit is not as  
3 available.

4 Q. I'm just asking you -- I appreciate the  
5 context of the question, but I'd like --

6 A. My pleasure.

7 Q. -- to phrase it for simply for my own  
8 purposes, and you can agree or disagree. What you  
9 just said and what this article says is telling  
10 whoever reads the article that credit markets have  
11 a direct impact upon the value that a person  
12 selling a company may receive?

13 A. Yes.

14 Q. And that was true then in 2009?

15 A. Mm-hmm, yes.

16 Q. And it was true during the transaction  
17 process?

18 A. It's true for all these periods.

19 Q. If you go to the next page, it's a page  
20 with a Bates numbers ending 52.

21 A. Yes.

22 Q. There's a paragraph heading that says  
23 "Business Models and Value Propositions." Do you  
24 see that?

1           A.       Yes.

2           Q.       And if you go down about midway, there's  
3 a sentence that begins "What has happened to  
4 virtually every daily newspaper in the U.S." Do  
5 you see that?

6           A.       I do.

7           Q.       And you're referring to daily  
8 newspapers -- many categories of retailing and the  
9 music business by way of examples of certain types  
10 of businesses, right?

11          A.       I am.

12          Q.       And then you say "These are just some  
13 examples where web commerce, where our vast  
14 digitally-enabled interconnectedness and the  
15 ability to disintermediate customer-facing value  
16 and supply chains, as well as gauge and pay for  
17 performance in real-time, have radically impacted  
18 business models and are clearly changing and in  
19 some cases, rapidly invalidating entire  
20 industries." Did I read that correctly?

21          A.       That was a good sentence. Well -- yes.

22          Q.       It was a mouthful.

23          A.       It was.

24          Q.       But the simple version of the statement

1 for my own purposes is that what you're alluding  
2 to here is the web changes how businesses may  
3 work?

4 A. Not just the web, but digital technology  
5 in general terms. But the web certainly is a very  
6 big part of that.

7 Q. And it can change them quite a lot in  
8 some cases, right?

9 A. The music industry.

10 Q. And you say that this web commerce may  
11 "rapidly invalidate entire industries." Do you  
12 see that?

13 A. Yes.

14 Q. And do you still agree with that?

15 A. Well, it did.

16 Q. And was it true --

17 A. It ---

18 Q. -- during the transaction process?

19 A. It was true for certain industries  
20 during the transaction process, sure.

21 Q. Do you -- and I guess I shouldn't phrase  
22 it that way. I'll try it again. Your opinions  
23 don't address web commerce and its impact on The  
24 Antioch Company, do they?

1           A.       I refer to web competitors. And I  
2       certainly allow that it was an impact. I don't  
3       discount that it wasn't -- that it was.

4           Q.       Was it a negative impact?

5           A.       It would certainly been -- pressured  
6       their sales. They would have -- I would think  
7       they lost marketshare, too.

8           Q.       And do any of the defendants, to your  
9       knowledge, control the stream of web commerce?

10          A.       Not that I know of.

11          Q.       Go ahead and turn, if you would, to  
12       Deposition Exhibit 803.

13          A.       What is 803?

14          Q.       That's the "Selling Your Company" email.

15          A.       Okay. I'm there.

16          Q.       And not to cover this in too much detail  
17       again, but if you turn to the second page of  
18       Exhibit 803...

19          A.       Mm-hmm.

20          Q.       This is again a piece that you wrote  
21       yourself?

22          A.       I did, yeah.

23          Q.       In the first paragraph, the last  
24       sentence says "Success takes a steady hand,

1 knowledge of the process, in addition to an  
2 ability to anticipate the twists and turns a deal  
3 often will take." Do you see that?

4 A. I do.

5 Q. And when you say twists and turns a deal  
6 often will take, what are you referring to?

7 A. Transactions are not linear. They --  
8 you know, you never really know what's going to  
9 come up, what type of deal tracks you're going to  
10 end up having to negotiate, what will show up in  
11 discovery that you did not understand that was  
12 there that may have some impairment -- basis in  
13 impairment. Things just happen. The deals are  
14 fairly complicated.

15 Q. I'm going to ask you just for  
16 clarification of your testimony because I was  
17 sitting in here, and I heard you reference  
18 discovery as part of a transaction process. And  
19 discovery has a special particularized meaning for  
20 lawyers.

21 A. Mm-hmm.

22 Q. And when you say "discovery" in this  
23 sentence, are you referring to due diligence and  
24 investigation of a target company?

1           A.       More specifically preliminary due  
2 diligence on the part of the investment bank and  
3 in part -- yeah, I -- there's -- fair enough.  
4 It's due diligence, so -- and it may be  
5 preliminary, but that's typically how I think  
6 about it.

7           Q.       Thank you. When you go further down the  
8 page here, there's a heading that says "Preparing  
9 Yourself," and there's a line that begins  
10 "Business values ebb and flow with the liquidity  
11 of capital markets, borrowing rates, and the flow  
12 of similar identifiable deals in addition to the  
13 fundamentals of the company being put up for  
14 sale." Did I read that correctly?

15          A.       You have.

16          Q.       And here again, the gist of that  
17 statement is that a company's value can ebb, which  
18 is to go down, or flow, which is to go up,  
19 depending upon these factors that you've listed  
20 here?

21          A.       Yes.

22          Q.       So the liquidity of capital markets can  
23 cause a company's value to go up or down?

24          A.       Up. Typically up. Or, I mean, if

1     you're saying the company -- the markets --  
2     there's abundance of liquidity in that context,  
3     certainly up.

4           Q.     Borrowing rates can cause the value of a  
5     company to go up or down?

6           A.     Could go down, cause the capital... It  
7     could go down or up. It depends what the credit  
8     -- if it's low cost of capital or it's high cost  
9     of capital, it could go either way.

10          Q.     The flow of similar identifiable deals  
11     can cause values to go up or down?

12          A.     Sure. There I mean comparables. People  
13     look out and see that companies are being bought  
14     and sold at these values, and -- and in a  
15     competitive environment, that -- that's fairly  
16     common to -- to kind of lock in or calibrate where  
17     deals are going to be valued at.

18          Q.     How much influence can any of the three  
19     factors that we've discussed -- how much influence  
20     can they have on value in a transaction?

21          A.     Oh, substantial.

22          Q.     Now, as to the liquidity of capital  
23     markets, you'd agree with me that none of the  
24     defendants have any control over the liquidity of



1 capital markets, true?

2 A. I agree.

3 Q. The same thing as to borrowing rates;  
4 none of the defendants in this case have any  
5 control over borrowing rates?

6 A. Agree.

7 Q. And the same thing is true over similar  
8 identifiable deals; they didn't, to your  
9 knowledge, have any influence over any similar  
10 identifiable deals during the time that Antioch  
11 engaged in the transaction process from 2007 to  
12 2008?

13 A. Yes, I agree.

14 Q. And your opinions in your report and  
15 your testimony here don't take into account or at  
16 least they don't address the liquidity of capital  
17 markets, do they?

18 A. Not specifically, no.

19 Q. Borrowing rates are not addressed?

20 A. No.

21 Q. Similar identifiable deals are not  
22 addressed?

23 A. Not directly, no.

24 Q. Turning to the page that ends with the

1 Bates numbers 135 of this document, there's a  
2 heading that says "One Last Thought," if you want  
3 to take a look at that paragraph.

4 A. Mm-hmm.

5 Q. The words say "While the letter of  
6 intent may only be legally binding with regard to  
7 confidentiality..." Do you see that sentence?

8 A. Yes, I do.

9 Q. And the idea conveyed in that sentence  
10 is that a deal isn't done when the legal -- or the  
11 letter of intent doesn't bind a party to actually  
12 consummate a deal?

13 A. That's correct.

14 Q. And the next sentence says "As a seller,  
15 you do not want to negotiate major issues in the  
16 middle of due diligence." Do you see that?

17 A. I do.

18 Q. And is it true that you do not want to  
19 negotiate major issues in the middle of due  
20 diligence because the deal can still fail in the  
21 middle of due diligence?

22 A. That's always possible. What I'm really  
23 meaning there, if that's what you're asking me, is  
24 that when you've already agreed to go into an

1 exclusive period of due diligence and all the  
2 other buyers are now sidelined, you don't want to  
3 be in a position where you're negotiating major  
4 deal turns when everybody's gone, and that it's  
5 always best to have this in extremely detailed  
6 letters of intent ahead of time so that the game  
7 plan is agreed to by the parties and all the  
8 disclosures are made relative to whatever needs to  
9 be disclosed at that point.

10 Q. And as the seller, when other buyers  
11 have dropped out and you're dealing with only one,  
12 you're losing bargaining leverage as the seller?

13 A. What I'm saying is you are now fairly --  
14 yeah, you're -- you have the least bargaining  
15 leverage at that point now that everybody else is  
16 gone. Yes, that's what I'm saying.

17 Q. Go ahead and turn to -- there's a  
18 separate article in here. I believe it says "A  
19 few critical ideas for negotiating M&A  
20 transactions." And the page number's ending in  
21 page 137. It's the second-to-last page of the  
22 document.

23 A. Okay.

24 Q. And I think somebody already asked you

1 about the bold italicized type that says "The deal  
2 is not over until all the money's in the bank."  
3 The paragraph before that, do you see that? It  
4 begins with "In other words"?

5 A. Yes, I do.

6 Q. And the language that you've written  
7 here says "Entrepreneurial, financial, and  
8 strategic buyers will all have different financing  
9 capacities and rate of return thresholds. This  
10 clearly impacts what and how they will pay." Do  
11 you see that?

12 A. I do.

13 Q. And is that sentence saying that  
14 different buyers will pay different amounts of  
15 money for the same target company?

16 A. Yes, it, in essence, says that.

17 Q. And some will pay more?

18 A. Yes.

19 Q. And --

20 A. Or less.

21 Q. As the seller, you want to look for  
22 whoever might pay the most for your company?

23 A. Yes.

24 Q. And it's not fantasy fulfillment to look

1 for opportunities with other buyers where they  
2 might pay more money?

3 A. No. It's fantasy fulfillment to try to  
4 get a deal in place that is substantially  
5 overvalued. One of the things we do as an  
6 investment banking firm is we -- we get good  
7 calibration and agreement with our seller as to  
8 what we think the business is worth, and that's  
9 the issue.

10 Q. You can put that aside. I'm going to  
11 hand you what's been marked as Deposition Exhibit  
12 807.

13 (Deposition Exhibit No. 807 was marked.)

14 Go ahead and take a look at Exhibit  
15 807. I'm not sure whether it's something you will  
16 have seen before or not.

17 A. I don't recall seeing it.

18 Q. Do you want to take a minute to look at  
19 the contents, or are you comfortable answering  
20 questions about it?

21 A. Let me just take a look for a minute.

22 Q. Sure.

23 A. (Examining document.) Okay. I've got  
24 it.

1           Q.     All right. Deposition Exhibit 807 is a  
2 document that bears a heading Antioch Publishing,  
3 slash, LudlowWard Capital Advisors Meeting -  
4 April 11, 2007, Notes. And I understand you  
5 haven't seen it before. It has a document control  
6 number that begins TAC-CC-0245719 through 21.

7           A.     Mm-hmm.

8           Q.     And it appears to be meeting notes  
9 without regard to who prepared the notes. Did you  
10 participate in the meeting with Antioch Publishing  
11 on April 11, 2007, to the best of your  
12 recollection?

13          A.     I don't recall that specific date or  
14 time, but it says that, and I don't -- I've no  
15 reason to doubt it.

16          Q.     And you're listed as a participant at  
17 the top of the page.

18          A.     Mm-hmm.

19          Q.     And do you know the other participants  
20 that are listed there?

21          A.     Certainly Madeline Ludlow was one of my  
22 business partners. Kim Wilson I know. Mr. Morgan  
23 I know. Tom Rogers I'm -- you know, I -- I don't  
24 -- I don't recollect who he was. Steve Bevelhymer

1 -- I'm not sure I'm saying that correctly -- I  
2 recognize only because of him showing up in  
3 documents that I reviewed for this. Anita  
4 Brown -- I don't know who she is. I don't recall.

5 Q. Without regard to who prepared the notes  
6 or whether the date is accurate, you were present  
7 at a meeting like the one that's described here?

8 A. Yeah. I -- I -- I believe I was, yes.

9 Q. And the notes discuss an engagement  
10 letter?

11 A. Mm-hmm.

12 Q. And Antioch and LudlowWard Capital  
13 Advisors would have been discussing an engagement  
14 letter in April of 2007, true?

15 A. Yes.

16 Q. And then it addresses "Offering  
17 Materials" and "Potential Buyers." Do you see  
18 that?

19 A. Yes.

20 Q. Looking at item number 3, "Potential  
21 Buyers," there are three potential buyers listed  
22 there. Do you have a recollection of discussing  
23 those buyers at a meeting either on or about  
24 April 11 of 2007?

1           A.       I certainly remember CM Paula. I  
2       remember the discussion about Mead. Oak Patch I  
3       just -- I don't recall, but... but I don't doubt  
4       that we did.

5           Q.       Who is CM Paula?

6           A.       CM Paula is a local Cincinnati-based  
7       company. I'm trying to think what all the things  
8       they did. They have a variety of novelty-type  
9       products that they -- I think they manufacture and  
10      sell, but I don't remember all -- but they're  
11      based in the Cincinnati area, so...

12          Q.       Under the list of potential buyers,  
13      there's a note. Do you see that?

14          A.       I do.

15          Q.       And the note says in the second sentence  
16      "Forward all ideas on potential buyers to  
17      LudlowWard. Do not exclude financial buyers or  
18      those who may wish to team up with management."  
19      Do you see that?

20          A.       I do.

21          Q.       Do you recall having a discussion about  
22      encouraging people to investigate buyers who may  
23      wish to team up with management?

24          A.       I don't. I don't doubt that it



1 occurred, but I don't remember.

2 Q. Is there anything inappropriate in your  
3 mind about considering buyers who wish to team up  
4 with management?

5 A. No.

6 Q. All right. And then the next two pages  
7 of this exhibit appears to be a list of people  
8 that are involved in the Antioch Publishing  
9 transaction. Do you see that?

10 A. Yes.

11 Q. And just for the record, it shows Mark  
12 Greenberg on the last page of that list.

13 A. Mm-hmm, yes.

14 Q. You can put that aside. Shuffling  
15 papers is always a challenge. Are you ready for  
16 the next one?

17 A. I'm ready for you.

18 (Deposition Exhibit No. 808 was marked.)

19 Q. I'm going to hand you what's been marked  
20 as Deposition Exhibit 808. If you would, take a  
21 look at that, please.

22 A. (Examining document.)

23 Q. While you're looking at that, for the  
24 record, Deposition Exhibit 808 is a two-page

1 document with the Bates numbers TAC-CC-0166648  
2 through 49. And it appears to be an email string,  
3 the latest of which appears to be from Christine  
4 Van Buren and dated November 23 of 2007 with the  
5 subject "Letter of Intent."

6 Have you had a chance to look at the  
7 document, Mr. Greenberg?

8 A. Yeah. I've just -- I just -- just  
9 scanned it quickly. Yeah, I got it.

10 Q. And can you tell us just generally what  
11 this email string is referring to?

12 A. Let me first preface that I don't recall  
13 this, but it's clearly from me and I'm in there  
14 and... There was apparently -- Christine Van  
15 Buren was looking to potentially acquire the  
16 business that we were selling, the Antioch  
17 Publishing business.

18 And I had requested from Christine and  
19 John -- I guess that's Mr. Hartley -- certain  
20 things that I would like to see in the -- in a  
21 letter of intent just as a starting point. And  
22 I've also asked for confirmation letters from  
23 qualified financing sources to insure that there  
24 was some means to -- to finance any deal that we

1 might move into.

2           There's a quote there. I have to read.

3       (Examining document.) Yeah, I'm just giving them  
4 kind of a hint as what we're looking to -- as a  
5 starting point to -- the way to address it, and  
6 that's it.

7           Q. I understand you don't remember  
8 precisely what happened on November 21st of 2007.  
9 If you go back to the second page, you'll see that  
10 the email string appears to originate with an  
11 email from Christine Van Buren on November 20th of  
12 '07, and it's addressed to you?

13          A. Yes.

14          Q. And do you recall who Christine Van  
15 Buren is or was at the time?

16          A. I really don't. I don't.

17          Q. Do you see next to Christine Van Buren's  
18 "from" line there's an address in brackets? It  
19 says "mailto:CVanBuren@antioch.com."

20          A. I do.

21          Q. Do you have a recollection of whether  
22 Christine Van Buren was an Antioch or an Antioch  
23 Publishing employee at the time that she sent this  
24 message to you?

1           A.     I have no recollection of it, but I  
2     don't doubt it. I just don't remember.

3           Q.     As it appears here, it looks like  
4     Christine -- and we'll just represent for the  
5     purposes of my questions that she was an employee  
6     at the time.

7           A.     I accept that.

8           Q.     Christine is expressing an interest in  
9     buying Antioch Publishing, fair?

10          A.     Yes.

11          Q.     And you're addressing her letter of  
12     intent with your response?

13          A.     Yes.

14          Q.     And this was not a deal that you brought  
15     to Antioch in connection with your role as the  
16     investment banker?

17          A.     It looks that way, yes.

18          Q.     And it looks to me you're engaging in  
19     the process with John and Christine and telling  
20     them what you need in order to review and assess  
21     their offer?

22          A.     To begin reviewing, yes.

23          Q.     And that wasn't a waste of time for you  
24     to look at their offer, I take it?

1           A.     I don't know. I can't express an  
2     opinion. I don't remember.

3           Q.     Based upon the letter of intent, which  
4     apparently didn't address cash at closing or  
5     assets assumed or detail and amounts relating to  
6     assumption of liabilities or assumption of lease  
7     obligations or financial assumptions, all of which  
8     you were asking for -- despite not having those  
9     things, you thought it was at least worth an email  
10    to ask her to provide you with more detail and  
11    information?

12          A.     Very clearly, yes.

13          Q.     And that wasn't a waste of your time, or  
14    you wouldn't have done it?

15          A.     Likely not, yeah.

16          Q.     And that back and forth between you and  
17    John and Christine didn't slow down the process of  
18    selling Antioch Publishing, did it?

19          A.     I don't recall that it did. I assume  
20    that it didn't.

21          Q.     And it didn't adversely affect the value  
22    that Antioch ultimately received for Antioch  
23    Publishing, did it?

24          A.     Not as far as I know.

1           Q.     I want to talk a little bit about  
2     information that may or may not have been  
3     available to you, and I -- this unfortunately is  
4     something of a memory test. And you can tell me  
5     whether your memory serves you or not, but I'll  
6     represent to you that we have looked at the  
7     documents that were produced to us in response to  
8     our subpoena and that the documents that were  
9     produced to us do not include a number of  
10    deposition transcripts.

11               And I believe that you've already  
12    identified some, but I would like to have a list.  
13    And if you agree or disagree, let me know.

14           A.     Mm-hmm.

15           Q.     By my count, there were 17 witnesses  
16    whose depositions that you were never provided  
17    with. And I'll identify the witnesses for you if  
18    I can, and you tell me whether you have seen it or  
19    not seen it.

20           A.     You're saying there's 17 that I have not  
21    seen?

22           Q.     You have not seen these.

23           A.     Fair enough. Okay.

24           Q.     Barry Hoskins?

1 A. I've not seen.

2 Q. Kimberlee Lipson-Wilson?

3 A. I don't believe I've seen it.

4 Q. Peter Abrahamson?

5 A. Don't recall seeing.

6 Q. Kreg Jackson?

7 A. Don't recall.

8 Q. Chandra Attiken?

9 A. She shows up in a lot of things as does  
10 Kimberlee Lipson-Wilson, but I don't recall  
11 reading...

12 Q. Her deposition, that is. You didn't  
13 receive her deposition?

14 A. If I didn't receive it, I certainly  
15 haven't read it.

16 Q. Dan Holthaus?

17 A. If I didn't receive it, I didn't -- I  
18 didn't read it.

19 Q. Marilyn Marchetti?

20 A. Again, same answer.

21 Q. Lee Bloom?

22 A. Same answer.

23 Q. Helen Morrison?

24 A. Same answer.

1 Q. Guy Walker?

2 A. Same answer.

3 Q. Cheryl Lightle?

4 A. Same.

5 Q. Uri Doron?

6 A. Same answer.

7 Q. Richard Wiser?

8 A. Same answer. If I didn't receive it, I  
9 didn't receive it -- didn't read it.

10 Q. G. Robert Morris?

11 A. If I didn't receive it, I didn't read  
12 it.

13 Q. And by the way, G. Robert Morris was a  
14 director after June 5th of 2008. Were you aware  
15 of that?

16 A. Was he the -- yeah, he was the one who  
17 was brought in by Evolve. Yes, I do.

18 Q. But you didn't receive his transcript,  
19 and you haven't read it?

20 A. If I didn't receive it, I haven't read  
21 it.

22 Q. Sandra Borstad?

23 A. Again, same.

24 Q. Rhonda Anderson?



1           A.       Same.

2           Q.       And then plaintiff W. Timothy Miller?

3           A.       Haven't seen it. Didn't read it.

4           Q.       Now, when we looked at the materials  
5 that were provided to you and reviewed by you, I  
6 personally -- and you can correct me if I'm  
7 wrong -- I didn't notice whether you had received  
8 any of the corrections pages for any of the  
9 witnesses for whose transcripts you may have  
10 reviewed.

11                   Are you familiar with the process by  
12 which witnesses review their transcripts for  
13 errors?

14           A.       Very vaguely, and -- but if I haven't  
15 received it, if they're not there, I have not read  
16 them and I did not receive them.

17           Q.       I don't recall seeing in the materials  
18 that you were provided -- but I could be wrong  
19 about this one -- Deposition Exhibit 586. And  
20 just for the record, Deposition Exhibit 586 has  
21 already been identified and testified to by  
22 another witness, but that document is minutes from  
23 a June 12, 2008, Antioch Company Board of  
24 Directors meeting. Does that ring a bell with you

1 at all?

2 A. June 12th? If it's not in there, I have  
3 not read it.

4 Q. Now, when Mr. Knoth asked you questions,  
5 you and he agreed that you could talk in terms of  
6 the old board and the new board with reference to  
7 what happened in June of 2008?

8 A. Yes.

9 Q. So June 12th is within the period of  
10 time for the new board, fair?

11 A. Fair.

12 Q. You're aware, I think, based upon your  
13 testimony, that the new board had new legal  
14 counsel?

15 A. Yes, I am aware.

16 Q. The Skadden Arps firm?

17 A. That's correct.

18 Q. And do you have an awareness of whether  
19 Skadden Arps advised the board to continue with  
20 the dual-track process?

21 A. I'm thinking about communications with  
22 Skadden Arps in the -- when they were first hired  
23 and how they responded. I can't say -- I just --  
24 I don't recall.

1           Q.     Does it make a difference to your  
2     opinions if Mr. Pohl, who's the lawyer for Skadden  
3     Arps, recommended to the new board that Candlewood  
4     take the lead with respect to potential  
5     refinancing transaction and that Houlihan continue  
6     to have responsibility for preparing for a  
7     potential sale of the company's assets?

8                 If that's the advice from Skadden Arps,  
9     does that have any effect on your opinions?

10          A.     Actually, let me qualify if I can.  If  
11     there was a refinancing that could occur in some  
12     valuation that would make some sense, then it  
13     would be hard to argue that that would be  
14     something that one ought to pursue.

15                 But to the extent that that hadn't  
16     occurred, then I would think that that was a  
17     preliminary comment on the part of the Skadden  
18     Arps lawyer and -- and that would be my best  
19     guess.  But, you know, on the face of it, that's  
20     what he's saying for sure.

21          Q.     It sounds like the dual-track process,  
22     true?

23          A.     It does.

24          Q.     And it sounds like they're saying

1 continue that, true?

2 A. They're saying continue it, yes.

3 MR. GENTRY: Thank you. I have no  
4 further questions right now. There may be others  
5 who are waiting. I thank you for your time and  
6 attention. I know it's very frustrating to be in  
7 that chair for as long as you have been. Thanks.

8 Let's go off.

9 (A brief break was taken.)

10 CROSS-EXAMINATION

11 BY MR. PRENTISS:

12 Q. Mr. Greenberg, I'm Dan Prentiss. I  
13 represent James Northrop. Do you know who he is?

14 A. I do.

15 Q. Who is he?

16 A. He became a board member... I'm trying  
17 to remember when he came on the board. He was --  
18 it was late in the game he became a board member.  
19 I don't remember the exact time frame.

20 Q. Do you know offhand which of your  
21 opinions you believe apply to Mr. Northrop?

22 A. Well, to the extent that -- that he was  
23 a part of the board in the decision process  
24 through '07 and through '08 prior to the ending of

1 the firing of the board, I suppose he would be  
2 part of those -- part of those opinions.

3 Q. All right. Now, I want to just clarify  
4 for my understanding and possibly for the record  
5 your opinions regarding losses that you've  
6 described.

7 And as I understand it, you testified in  
8 response to several questions that you have two  
9 categories of loss. One category is in the range  
10 of 16 to 23 million, which is a diminution in  
11 value of the business; is that true?

12 A. That's true.

13 Q. And the second category is \$6 million in  
14 professional fees?

15 A. Yes.

16 Q. As to the diminution of value of the  
17 business, you testified yesterday in response to  
18 Mr. Scheier's questions that that is derived from  
19 two different data points, correct?

20 A. Yes, from the Whitney offer and from the  
21 CRG valuation in the bankruptcy position.

22 Q. Although you have experience in doing  
23 business valuations, you did not, for the purpose  
24 of giving an opinion in the trial of this case,

1 did not perform an independent business valuation  
2 of The Antioch Company as to either of those  
3 dates -- operative dates; is that true?

4 A. That's true.

5 Q. You accepted or have relied on the  
6 J.H. Whitney proposed deal as the proxy for the  
7 value of the Antioch business as of June 2008?

8 A. I have.

9 Q. Okay. And you have accepted as -- for a  
10 valuation as of December 31, 2008, the description  
11 in the disclosure statement of a valuation  
12 performed by CRG?

13 A. Yes.

14 Q. Okay. And so the diminution in value  
15 took place over the period from June 5th, 2008, to  
16 December 31st, 2008, correct?

17 A. That would be a fair estimate, yeah.  
18 Yeah, I agree.

19 Q. As of June 5th, 2008, the business was  
20 worth, based on the materials that you rely on,  
21 \$54 million, plus or minus?

22 A. Yes.

23 Q. And as of December 31st, according to  
24 the materials you rely on, the business was worth

1       between 31.6 and 38 million dollars?

2           A.       Correct.

3           Q.       And that delta is the 16 to 23 million  
4       dollars?

5           A.       Yes, sir.

6           Q.       You'll agree with me, then, that the  
7       Special Transaction Committee, which was  
8       terminated as of June 5th, 2008, has no  
9       responsibility for any of the diminution in value  
10      of the business that took place from June 5th,  
11      2008, to December 31st, 2008?

12          A.       If those are the benchmarks and those  
13      are the periods, then I would tend to agree, yes.

14          Q.       I mean, the Special Transaction  
15      Committee recommended to the board to pursue the  
16      J.H. Whitney deal to completion, correct?

17          A.       Correct.

18          Q.       And you commend that recommendation by  
19      the Special Transaction Committee?

20          A.       I believe that was the right thing to  
21      do.

22          Q.       And you commend the board's decision --  
23      the old board's decision to accept the  
24      recommendation and to pursue that transaction to a

1 closing, correct?

2 A. Yeah, from the point of view of how  
3 we're estimating the damages, it was -- the 54  
4 million was the -- was the number that it should  
5 have closed out; and presuming that if it did,  
6 we'd -- nobody in this room would be sitting here  
7 right now, so...

8 Q. My question was, you commend the  
9 decision by the board of directors, the old board  
10 of directors of The Antioch Company, to pursue the  
11 J.H. Whitney offer, too?

12 A. I believe it was the right decision at  
13 the time when that offer was made. It didn't mean  
14 that I didn't think the board could have had  
15 better offers earlier, but it certainly indicated  
16 at that time that's where they were.

17 Q. And the reason -- the sole reason for  
18 the delta, the diminution in value of The Antioch  
19 Company, was the action of the ESOP trustee in  
20 firing the board and rejecting the J.H. Whitney  
21 deal, right?

22 A. It was certainly the act that caused  
23 that to occur. Was it the sole reason? I don't  
24 -- I don't -- I wouldn't -- I would -- I would



1 take issue with that, but it certainly was the act  
2 that created that circumstance.

3 Q. What other reason besides the  
4 termination of the board caused the rejection of  
5 the J.H. Whitney deal?

6 A. In my view, the -- the -- one of the  
7 causes of that -- and -- is the -- was the belief  
8 that somehow there was another kind of deal out  
9 there that would recognize value associated with  
10 the ESOP, the ESOP notes, and the sub debt -- and  
11 the sub debt. And that was, again, an  
12 undercurrent in this whole process.

13 And then with the belief that I had that  
14 if one really understood that it would have been  
15 very difficult to do a deal outside of a 363  
16 bankruptcy auction, that -- that you probably  
17 would have potentially closed the deal much  
18 earlier if that was the predicate that you went  
19 into the market with.

20 Q. But the board of directors -- the old  
21 board of directors when it voted to pursue  
22 J.H. Whitney offer0?

23 A. Was not holding back anything in hope of  
24 a better deal; it made a commitment to close on

1 J.H. Whitney?

2 A. I agree.

3 Q. Now, as to the \$6 million in  
4 professional fees, your understanding of that  
5 figure is that that is a total amount of fees paid  
6 by The Antioch Company to professionals for  
7 professional services over what period of time?

8 A. I'm thinking it's probably the '07 --  
9 '07/'08 period.

10 Q. And when you say you think it's  
11 probably, you don't have a firm --

12 A. I don't have a specific --

13 Q. -- grasp of that?

14 A. I don't.

15 Q. You got the figure from the Taft  
16 lawyers, correct?

17 A. I did.

18 Q. You testified to that yesterday. And  
19 your assumption now, in looking back on it, is  
20 that they were giving you a figure for a 2007/2008  
21 time frame --

22 A. Yes.

23 Q. -- correct?

24 A. That's correct.

1           Q.     And you've testified in response to  
2     other questioners that at least some of the \$6  
3     million that was paid out for professional fees by  
4     Antioch was money well spent for professional  
5     advice that Antioch really needed, correct?

6           A.     Yes.

7           Q.     So the only part of that \$6 million that  
8     would contribute to a claim of a loss would be  
9     excess expenditures over and above what reasonably  
10    was required by The Antioch Company for  
11    professional services, right?

12          A.     Yes.   And if -- may I frame that?   I  
13    believe that as -- certainly as early as the late  
14    fall of '07 and -- for several reasons, but a  
15    major reason was the -- the -- the surety issue on  
16    the -- on the ESOP notes, that it was pretty clear  
17    that you would have needed to go through  
18    bankruptcy.

19                 And a 363 is a highly efficient process.  
20    We -- I've closed 363s in two-and-a-half months  
21    right through auction and purchase.   And -- and my  
22    belief is that that could have accelerated, and  
23    this -- this -- this whole process could have come  
24    to a better end earlier than it -- than it

1 actually ended up doing.

2 Q. What you're saying when you say you  
3 believe this process could have been accelerated,  
4 you say events could have transpired that could  
5 have changed the dates or effective dates of the  
6 outcome; but to actually give an opinion as to  
7 when or how would be speculation, right?

8 A. I agree.

9 Q. So would this be true: You're unable to  
10 quantify a figure that, in your opinion,  
11 constitutes excess expenditures for professional  
12 fees incurred by the old board of directors up  
13 until June 5th, 2008, when the board was fired?

14 A. I couldn't do that without making  
15 assumptions about how that process would  
16 accelerate.

17 Q. As we are sitting here and you are here  
18 to explain to us your opinions, you have no  
19 opinion as to a figure that, in your professional  
20 opinion, is excess fees incurred and expended by  
21 The Antioch Company for professional services?

22 A. As I'm sitting here now, I do not.

23 MR. PRENTISS: Thank you. That's all I  
24 have.

1 MR. KLINGLER: I have a few questions.

2 CROSS-EXAMINATION

3 BY MR. KLINGLER:

4 Q. Good afternoon, Mr. Greenberg. I'm Bob  
5 Klingler. I represent G. Robert Morris, Kim  
6 Lipson-Wilson, Barry Hoskins, Karen Felix, and  
7 Steve Bevelhymer.

8 We've been here for the better part of  
9 two days, and I've listened to all the testimony  
10 and read your report. I just have a few questions  
11 about how your opinion might or might not pertain  
12 to my clients.

13 With respect to Steve Bevelhymer first  
14 of all -- by the way, do you remember reading his  
15 deposition?

16 A. I don't recall. If it's in there, I  
17 have, and I certainly understood who he was in  
18 the...

19 Q. Is it true that you will not be giving  
20 any opinions that attribute any damage allegedly  
21 suffered by The Antioch Company to anything that  
22 Steve Bevelhymer did or did not do?

23 A. There's nothing that I know of that I --  
24 that I would attribute to him.

1           Q.     Is it true that you will not be giving  
2     any opinions that attribute anything that Barry  
3     Hoskins did or did not do to any damage allegedly  
4     suffered by The Antioch Company?

5           A.     That would be true.

6           Q.     And with respect to Karen Felix, is it  
7     true that you will not be giving any opinion that  
8     attributes any damage allegedly suffered by The  
9     Antioch Company to anything Ms. Felix did or did  
10    not do?

11          A.     That's true.

12          Q.     And with respect to G. Robert Morris, is  
13    it true that you will not be giving any opinion  
14    that attributes any damage allegedly suffered by  
15    The Antioch Company to anything Mr. Morris did or  
16    did not do?

17          A.     I'm trying to think who Mr. Morris was  
18    in this process. Could you refresh my memory?

19          Q.     Yes. His name doesn't appear in your  
20    report, but he's referred to, I think, in your  
21    report as the attorney who was appointed by  
22    Evolve --

23          A.     Oh, Evolve.

24          Q.     -- to the board of directors.

1           A.       Okay.  No, I have nothing in my opinion  
2       about him.

3           MR. KLINGLER:  Okay.  That's all I have.  
4       Thank you.

5           Actually, I'm sorry.  I do have one more  
6       question.

7           THE WITNESS:  You didn't cover Kim  
8       Lipson-Wilson.

9           MR. KLINGLER:  Thank you.

10          THE WITNESS:  Should I help you?

11          MR. KLINGLER:  Yes, thank you very much.  
12       I have two more questions.

13          Q.       (By Mr. Klingler)  With respect to  
14       Kim --

15          A.       Gotta stay on top of things over here.  
16       You guys gotta stay alert.  A little more coffee  
17       might help.

18          Q.       With respect to Kim Lipson-Wilson, is it  
19       true that you will not be giving any opinion that  
20       attributes any alleged damage suffered by The  
21       Antioch Company to anything she did or did not do?

22          A.       I will not.

23          Q.       The other question I wanted to ask you  
24       was with respect to the Condor transaction, you

1 indicate on page 20 of your report -- you don't  
2 need to pull it out. You can if you want --

3 A. Yeah, I know what's in there.

4 Q. -- but let me just read it to you. You  
5 say on page 20, and I quote, "Unable to use the  
6 company balance sheet to guarantee the notes, and  
7 given the company's teetering finances and risks  
8 of payment default, the company's insurance broker  
9 was only able to find an off shore unrated  
10 insurance company to underwrite surety for the  
11 ESOP notes," end quote, and that insurer was  
12 Condor.

13 A. Yes.

14 Q. Do you have any information -- you  
15 apparently didn't when you wrote this report. Do  
16 you have any information to indicate that there  
17 was any insurer available other than Condor to  
18 insure these ESOP notes?

19 A. Based on the exhibits and various  
20 testimony, it appeared that the broker couldn't  
21 find anybody other than Condor to insure the  
22 notes.

23 Q. And do you have any information that  
24 there was, in fact, some other insurer out there



1       that the broker or somebody else didn't find?

2           A.       I have no information as to the extent  
3       of the broker's attempt to source another --  
4       another -- another insurance company. I have no  
5       idea.

6           Q.       Okay. So just to nail it down here,  
7       you're not aware of any other source that this  
8       broker did not find that he could or should have  
9       found?

10          A.       That's a very strange question to ask in  
11       the way you've asked it. I am not aware of any  
12       other insurance provider for the surety of the  
13       notes.

14                   MR. KLINGLER: Okay. Am I finished?

15                   THE WITNESS: I don't know.

16                   MR. KLINGLER: Thank you. I'm done.

17                   THE WITNESS: You're welcome.

18                   MS. ANDREW: Are we done?

19                   MR. SCHEIER: I'd like to take a short  
20       break and just caucus with my clients. I think I  
21       have no more questions, but I'd like to have the  
22       opportunity to recross.

23                   (A brief break was taken.)

24

1	RECROSS-EXAMINATION
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2 BY MR. SCHEIER:

3 Q. Hello, Mr. Greenberg. Mike Scheier  
4 again. You recall I represent Lee Morgan, Asha  
5 Moran, and Marty Moran, and a group of Morgan  
6 family trusts, and I one time represented a former  
7 defendant in this case, Chandra Attiken.

8 I just have a couple follow-up questions  
9 for you based on some of the responses you gave to  
10 other counsel.

11                   Initially I'd like to ask, have you seen  
12   any evidence -- let me take a step back. I want  
13   to stick with the nomenclature of "old board" and  
14   "new board." When I use those phrases, you'll  
15   understand what I mean, correct?

16           A.     Yes, I do.

17 Q. Can you point to any evidence of  
18 anything the new board did that caused decrease in  
19 the value of the company as you testified from the  
20 \$54 million that Whitney had set forth in its LOI  
21 to the point that CRG gave its valuation estimate?

22 A. I can't point to anything specifically.

23 MR. SCHEIER: Okay. Thank you. I have  
24 no further questions.

1                   (Whereupon, the deposition was adjourned  
2   at 2:43 p.m.)

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MARK A. GREENBERG

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## 1 CERTIFICATE

2 STATE OF OHIO :  
3 : SS  
COUNTY OF HAMILTON:

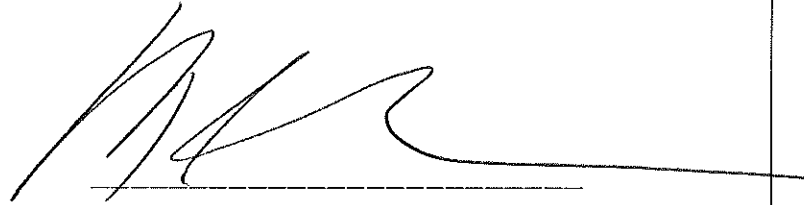
4 I, Kelly Green, the undersigned, a duly  
5 qualified and commissioned Notary Public within  
6 and for the State of Ohio, do hereby certify that  
7 before the giving of the aforesaid deposition, the  
8 said MARK A. GREENBERG was by me first duly sworn  
9 to tell the truth; that the foregoing is a true  
10 and accurate record of the testimony given at said  
11 time and place by said deponent; and that said  
12 deposition was taken by me in stenotype and  
13 transcribed by computer-aided transcription, and  
14 that signature is not waived.

15 I certify that I am not a relative,  
16 employee of, or attorney for any of the parties or  
17 attorneys in the above-captioned action; I am not  
18 financially interested in the action; I am not  
19 under a contract as defined in Civil Rule 28(D).

20 IN WITNESS WHEREOF, I hereunto set my  
21 hand and official seal of office at Cincinnati,  
22 Ohio, this 31st day of August, 2013.

23 My Commission expires:  Kelly Green, RPR  
24 August 10, 2014 Notary Public, State of Ohio

1 (Whereupon, the deposition was adjourned  
2 at 2:43 p.m.)

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4  
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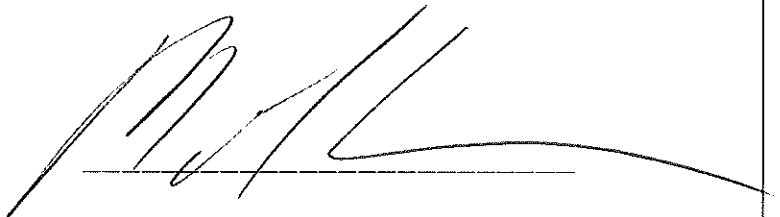
6 MARK A. GREENBERG  
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1 your report?

2 A. I believe so.

3 MR. SCHEIER: I believe that's all I  
4 have. Thank you for your time today.

5 (Whereupon, the deposition was adjourned  
6 at 5:10 p.m.)

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MARK A. GREENBERG

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